

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
vs.) CRIMINAL CASE NO.
) 1:23-cr-00278-JKB
CHRISTOPHER KENJI BENDANN,)
Defendant.)
_____)

THURSDAY, MAY 9, 2024
Courtroom 5A
Baltimore, Maryland

TRANSCRIPT OF PROCEEDINGS
MOTIONS HEARING
BEFORE THE HONORABLE JAMES K. BREDAR

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Also Present:

Rachel Corn, FBI Special Agent
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(Computer-aided Transcription of Stenotype Notes)

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I N D E X
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MAY 9, 2024

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P R O C E E D I N G S

(10:14 a.m.)

THE COURT: Ms. McGuinn, you may call the case.

MS. MCGUINN: Yes, Your Honor. Good morning.

Assistant United States Attorneys Colleen McGuinn and Kim Hagan on behalf of the Government, calling United States of America versus Christopher Kenji Bendann. This is Criminal Case Number JKB-23-278. Standing to my right, Your Honor, is Special Agent Rachel Corn as well as Special Agent Callista Walker with the FBI.

THE COURT: Good morning. Good morning, Mr. Nieto.

MR. NIETO: Yes. Good morning, Your Honor. For the record, Christopher Nieto and Gary Proctor on behalf of Mr. Bendann who is standing to our left -- or my left.

THE COURT: Okay. Good morning. You may all be seated.

Ms. McGuinn, we're here for a hearing on two pretrial motions filed by the defendant. First, the motion to suppress evidence obtained through search warrants, which is docketed at ECF Number 78 and second, the defendant's motion to suppress evidence obtained from a cell phone docketed at ECF Number 79.

The defendant has made the motions but the way the criminal law works, the Government really has the burden now of going forward and demonstrating the lawfulness of the investigative steps that were taken in this case and,

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1 accordingly, my expectation is that the Government will be
2 ready to go forward first with its evidence.

3 MS. MCGUINN: Yes, Your Honor.

4 THE COURT: Are we on the same page?

5 MS. MCGUINN: Yes, Your Honor.

6 THE COURT: And agreed, Mr. Nieto?

7 MR. NIETO: Yes, Your Honor.

8 THE COURT: Okay. And Ms. McGuinn, with that in
9 mind, give me a little bit of a roadmap of how you hope to
10 proceed this morning.

11 MS. MCGUINN: Thank you, Your Honor. The Government
12 would like to proceed with the second motion, the cell phone
13 motion first. We have witnesses for that. We have three
14 witnesses, Detective Markel from Baltimore County Police,
15 former Special Agent Patrick Winn of the FBI, and Mr. Jon
16 Shumway, who is retired also with the FBI but was their
17 forensic examiner who was on the scene at the time of the
18 execution of the warrant.

19 So we would like to present the testimony first.
20 Ms. Hagan is going to handle that motion. And then, if Your
21 Honor agrees, we can conclude that motion and move to the, I
22 guess, first motion dealing with the search warrant. At that
23 time counsel anticipates that that will just be more of an oral
24 argument based on the warrants that were submitted to Your
25 Honor.

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1 THE COURT: Because they're rooted in questions about
2 the sufficiency of the supporting affidavits.

3 MS. MCGUINN: Yes, Your Honor.

4 THE COURT: Yep, I get it.

5 Okay. Let's deal with the issues that require the
6 testimony first. That sounds like the second motion.

7 And, Mr. Nieto, any preliminary thoughts before we get
8 started in the nature of roadmapping or concerns about the
9 Court's plan?

10 MR. NIETO: No, Your Honor. I spoke with Government
11 counsel. We thought ECF 79 should go first and then ECF 78. I
12 would respectfully make the motion to sequester the witnesses.

13 THE COURT: Yeah.

14 MR. NIETO: But otherwise, Your Honor, that's my
15 understanding of the hearing today.

16 THE COURT: Very good. The motion's granted. Anyone
17 who expects to give testimony during this motions hearing is
18 now required to step out of the courtroom and stay out of the
19 courtroom and only be in the courtroom during their own
20 testimony, and after they have been excused as a witness, and
21 to the extent that that applies to you, just go out in the
22 vestibule. Don't go far because we don't know exactly when we
23 might need you, and we'll be squared away.

24 Okay. Ms. Hagan, you may call your first witness.

25 MS. HAGAN: Your Honor, the Government calls

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1 Detective Shannon Marke1.

2 THE COURT: Shannon Marke1. How do I spell that?
3 M-a-r-k-1-e?

4 MS. HAGAN: M-a-r-k-e-1.

5 THE COURT: Okay. Stop right there if you would,
6 stand and face our clerk, raise your right hand.

7 THE CLERK: Good morning.

8 (Shannon Marke1 was duly sworn.)

9 THE CLERK: Thank you. You can have a seat.

10 THE WITNESS: Good morning, Your Honor.

11 THE COURT: Good morning.

12 THE CLERK: If you don't mind adjusting that
13 microphone, make sure you're speaking directly into it.

14 THE WITNESS: Okay.

15 THE CLERK: Please state and spell your first and
16 last name for the record.

17 THE WITNESS: Yes. Corporal Shannon, S-h-a-n-n-o-n,
18 last name Marke1, M-a-r-k-e-1.

19 THE COURT: So here's the deal with that microphone.
20 It doesn't pick up well if it isn't right by your face. So you
21 slide it along the rail on the right side, the base of it, and
22 bring it back towards you, and let the mic be more sort of
23 perpendicular sticking out in front of your face.

24 THE WITNESS: Okay.

25 THE COURT: That's it. Because what happens is

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1 witnesses start strong and then they fade out. So it's got to
2 be closer even than that, unfortunately. Two inches.

3 THE WITNESS: How's that?

4 THE COURT: Perfect. You got it.

5 Your witness, ma'am.

6 MS. HAGAN: Thank you.

7 DIRECT EXAMINATION

8 BY MS. HAGAN:

9 Q. Good morning, Detective Markel.

10 A. Good morning.

11 Q. Can you tell us how you are employed?

12 A. Yes. I'm currently employed with Baltimore County Police
13 Department.

14 Q. And how long have you been employed with the Baltimore
15 County Police Department?

16 A. 17 years.

17 Q. What is your current assignment?

18 A. I'm currently a corporal in the Towson precinct in the
19 patrol division.

20 Q. And how long have you held that position?

21 A. Since January 2024.

22 Q. And prior to that position in patrol as a supervisor, can
23 you tell us what your previous assignments were?

24 A. Sure. So I started with Baltimore County Police
25 Department in 2006. I was assigned to the patrol division. I

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1 remained in that position for approximately eight years before
2 moving to patrol-level investigations.

3 After that, in approximately 2014, I was promoted to
4 Criminal Investigations Bureau detective in the Violent Crimes
5 Unit. I was there for approximately four years.

6 After that, I was assigned to the Crimes Against Children
7 Unit for approximately five years; and then January 2024, I was
8 able to achieve promotion to the rank of corporal and now I'm
9 back in patrol.

10 Q. Okay. I'm going to direct your attention to January 21st
11 of 2023. Did you become aware of a report to the Baltimore
12 County Department of Social Services regarding a teacher at the
13 Gilman School in Baltimore?

14 A. Yes.

15 Q. And what were the nature of the allegations that were
16 reported to Baltimore County Department of Social Services?

17 A. Sure. It was reported that there was a teacher at the
18 Gilman School who was reportedly providing alcohol to students
19 in exchange for them to take off their clothes and run around
20 naked in various locations within Baltimore County.

21 Q. And did you learn what the current status was of the
22 teacher at that time?

23 A. He had been recently terminated from Gilman.

24 Q. And do you recall the --

25 THE COURT: So the school's in the city but the

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1 allegations were that the conduct that was reported happened in
2 the county?

3 THE WITNESS: Correct, Your Honor.

4 THE COURT: Next question.

5 BY MS. HAGAN:

6 Q. And what was the teacher's name?

7 A. Christopher Kenji Bendann.

8 Q. And in response to the report to the Baltimore County
9 Department of Social Services, to whom did they report?

10 A. I'm sorry, can you repeat the question?

11 Q. Who did the Department of Social Services report that
12 information to?

13 A. Yeah. So it was a referral through Baltimore County
14 Social Services, which was also -- which was also forwarded to
15 the Baltimore County Police Department Crimes Against Children
16 Unit for followup.

17 Q. And did you assume primary case responsibility?

18 A. Yes, ma'am.

19 Q. Okay. And as part of the investigation and followup, were
20 there forensic interviews that were conducted with two
21 different victims?

22 A. Yes.

23 Q. Former students?

24 A. Yes.

25 Q. And where were those interviews conducted?

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1 A. At the Baltimore County Child Advocacy Center.

2 Q. And was one of the victims that was forensically
3 interviewed the victim who was identified in the indictment in
4 this case?

5 A. Yes.

6 THE COURT: What's the Baltimore County Child
7 Advocacy Center?

8 THE WITNESS: Sir, it's a community center warehoused
9 in the health department, and it's where we comprise our
10 multidisciplinary team which essentially assists with any child
11 abuse cases, child maltreatment. We're often paired with
12 social workers, nurses, doctors, State's Attorneys, where we
13 just support the community when it comes to child maltreatment.

14 THE COURT: Got it. Next question.

15 BY MS. HAGAN:

16 Q. And were the victims forensically interviewed at the Child
17 Advocacy Center, and if you could explain what that means?

18 A. Yes. So when we receive a case at the Child Advocacy
19 Center, our first steps is to schedule what we call forensic
20 interview with the child and the parent.

21 The child is interviewed by a certified forensic
22 interviewer, typically a social worker, and it's just -- it's
23 just an opportunity for us to explore whether maltreatment or
24 abuse has occurred. It's a safe, supportive space for the
25 child. It's an evidence-gathering and also reliability and

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1 credibility gathering-type interview using open-ended-style
2 questions.

3 Q. Okay. And as part of the forensic interview in particular
4 of the victim who's identified in this particular indictment,
5 did the victim provide his cell phone and iPad and consent to a
6 review and download of those devices?

7 A. Yes, he did.

8 Q. And did you have an opportunity to review the contents of
9 those extractions?

10 A. I did.

11 Q. And based on your review of those materials, did you seek
12 to obtain a search warrant for certain locations and a person?

13 A. Yes.

14 Q. Can you identify the person and the locations for which
15 you sought a search warrant?

16 A. Sure. The search warrant was prepared for the address of
17 115 Stanmore Road, Baltimore, Maryland 21209; and the person
18 was Christopher Kenji Bendann, date of birth 7/1/1984.

19 Q. And was there also a vehicle that was included as well?

20 A. Correct, yes. Also listed on the search warrant was a
21 vehicle. It was a 2009 Honda CR-V, Maryland Tag 1AK6146 listed
22 to the defendant.

23 Q. And did you include in the search warrants for those
24 locations and the individual the information that you knew at
25 the time of Christopher Bendann, like his known residence at

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1 the time?

2 A. That's correct.

3 Q. And how about his personal identifying information such as
4 his date of birth, was that included as well?

5 A. Yes, ma'am.

6 Q. And where had you gathered that information from?

7 A. Through MVA searches.

8 Q. Did those search warrants that you sought also authorize
9 the search and seizure of Mr. Bendann's electronic devices?

10 A. Yes.

11 Q. And that would include cell phone, iPad, things of that
12 nature?

13 A. That's correct.

14 Q. And did the warrants also authorize the seizure of
15 Mr. Bendann's biometric data in order to unlock any electronic
16 devices?

17 A. Yes.

18 Q. And can you explain what you mean when we use the phrase
19 "biometric data"?

20 A. Sure. Biometric data would include facial recognition,
21 which would be his facial image, fingerprint, and his eyes.

22 Q. And is that commonly requested in search warrant
23 applications when you are seeking to search and seize
24 electronic devices in order to unlock them?

25 A. Yes.

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1 Q. And were you granted search warrants for the person of
2 Mr. Bendann, his residence, and his vehicle?

3 A. Yes.

4 MS. HAGAN: Your Honor, may I approach the witness
5 with Government Exhibit 1?

6 THE COURT: You may, and you don't have to ask.
7 who issued the warrant?

8 THE WITNESS: Your Honor, it was Judge Karen
9 Pilarski.

10 THE COURT: Baltimore County District Court?

11 THE WITNESS: Circuit Court.

12 THE COURT: Circuit Court, thank you.

13 BY MS. HAGAN:

14 Q. Detective Markel, I'm going to ask you to take a look at
15 the contents of Government Exhibit 1 and tell me if that
16 document contains the search warrants that you just described,
17 the warrants themselves, as well as the affidavit.

18 A. Yes, it does.

19 Q. And you indicated they were signed by Judge Pilarski.
20 what was the date that you actually received the search
21 warrant?

22 A. Sure. It was February 1st, 2023.

23 Q. And I'm just going to direct your attention to Page 4 of
24 your affidavit, Paragraph 4. Is that one of the locations in
25 Government Exhibit 1 in which you are explaining your request

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1 to seize biometric data?

2 A. Yes.

3 Q. And also directing your attention to Page 12. Does that
4 also specify that you are seeking authorization to request
5 biometric data of Mr. Bendann?

6 A. That's correct.

7 Q. And directing your attention to Page 14, does that also
8 specify the conduct or actions that you are seeking
9 authorization in order to obtain biometric data from
10 Mr. Bendann?

11 A. Yes.

12 Q. And can you just read that portion so we have an
13 understanding of how you physically would obtain the biometric
14 data?

15 A. Sure. Which --

16 Q. 14.

17 A. Start at the top?

18 Q. The specific actions regarding the biometric data would
19 be --

20 A. Okay.

21 Q. I'm sorry, it would be the fourth paragraph down, just
22 above --

23 A. Sure.

24 Q. -- the heading.

25 A. "Based on the foregoing, if law enforcement personnel

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1 encounter devices subject to seizures pursuant to this warrant
2 it may be unlocked using the aforementioned biometric features.
3 The warrant your affiant is applying for would permit law
4 enforcement personnel to, one, press and swipe the fingers
5 including thumbs of Christopher Kenji Bendann to the
6 fingerprint scanner of the seized devices; two, hold the device
7 in front of Christopher Kenji Bendann to activate the facial
8 recognition feature; and/or, three, hold the device in front of
9 the face of Christopher Kenji Bendann and activate the iris
10 recognition feature for the purpose of attempting to unlock the
11 device and attempting to access data contained in the device in
12 order to search for evidence of the Maryland Criminal Codes
13 listed above as authorized by this warrant."

14 Q. Thank you. And when were these search warrants actually
15 executed?

16 A. They were executed on February 3rd, 2023.

17 Q. And tell us what, if any, preparation and planning
18 occurred prior to the execution of the search warrants?

19 A. Sure. We prepared an operations plan. And the operations
20 plan is -- it's a routine procedure. It's a form that we
21 complete which basically identifies all possible residents,
22 occupants of the residence, any hazards that we might encounter
23 when we try to execute the warrant, and how we're going to
24 mitigate those and also any local hospitals and things in the
25 area. We do complete a full background packet for any possible

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1 residents, occupants of the residence during that time.

2 Q. Okay. And is the operational plan in writing?

3 A. Yes.

4 Q. I'm going to show you what's marked as Government Exhibit
5 2. You can take a look at Government Exhibit 2 and tell me if
6 you recognize this document?

7 A. Yes. This is the operations plan.

8 Q. And who is provided a copy of the operations plan?

9 A. Everyone who's going to be present at the execution of the
10 search warrant will get a copy of the operations plan.

11 Q. And did that include yourself?

12 A. Yes.

13 Q. And as the lead detective, did you familiarize yourself
14 with the contents of the operations plan?

15 A. Yes.

16 Q. And did that include the details that were provided on the
17 target location?

18 A. Yes.

19 Q. And how about the details provided on the target person,
20 Mr. Bendann?

21 A. Yes.

22 Q. And did the details in the operation plan include
23 Mr. Bendann's date of birth?

24 A. Yes, it did.

25 Q. Approximately what time on February 3rd was the search

Direct Examination - Shannon Markel

1 warrant on the residence executed?

2 A. Approximately 5:18 a.m.

3 Q. And can you tell us how entry was made into the residence?

4 A. Yeah. The Baltimore County Tactical Unit was utilized for
5 this execution of this warrant.

6 Q. And were you physically present when the Tactical Unit
7 approached the residence?

8 A. No.

9 Q. What was your location?

10 A. I was stationed in a vehicle monitoring via radio.

11 Q. And were you nearby?

12 A. Yes.

13 Q. Approximately how far?

14 A. I was probably a block away.

15 Q. Okay. And have you had an opportunity to review body-worn
16 camera footage provided by the Tactical Unit?

17 A. Yes.

18 Q. Did you have a sense of how the initial approach occurred?

19 A. Yes.

20 Q. Can you tell us what happened?

21 A. Sure. The Tactical Unit approached the front door. They
22 knocked and began giving commands for any occupants to come to
23 the front door. And the defendant came to the door and was
24 secured at the front door of the location.

25 Q. And was there anyone else in the residence at the time?

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1 A. No.

2 Q. And what type of residence was this? Single family home,
3 townhome?

4 A. It was a townhome.

5 Q. One, two levels?

6 A. Yes, it was two levels.

7 Q. Okay. And what hap -- well, I'm assuming the Tactical
8 Unit cleared the residence?

9 A. Yes.

10 Q. And after they cleared the residence, what type of
11 communication is relayed to you?

12 A. They relayed that the home was safe and secure, that it
13 was okay for us to enter and that the defendant was secured in
14 the dining room of the residence.

15 Q. And at that point did you actually respond to the location
16 and go into the residence?

17 A. Yes.

18 Q. Anyone else with you?

19 A. Members of the Baltimore County Police Department, FBI
20 personnel, as well as a Frederick County K9 officer.

21 Q. And would you as a detective have been wearing a body-worn
22 camera at the time?

23 A. No.

24 Q. How about any patrol officer that accompanied you?

25 A. Yes. We had a patrol officer on scene who was equipped

Direct Examination - Shannon Markel

1 with a body-worn camera.

2 Q. Tell us where Mr. Bendann was located when you first
3 entered the residence.

4 A. He was seated in a chair in the dining room.

5 Q. Do you recall if he was in flex cuffs?

6 A. He was.

7 Q. And how was he dressed?

8 A. He was in his boxer shorts and he didn't have a shirt on.

9 Q. And do you recall whether it was dark out during this hour
10 or still light?

11 A. It was dark.

12 Q. And did there come a point in time where you or one of
13 your colleagues removed the flex cuffs from Mr. Bendann?

14 A. Yes.

15 Q. When was that done? Do you recall?

16 A. It was pretty shortly after entering the residence and
17 making contact with him. Once we determined that he wasn't a
18 threat, then he was unhandcuffed.

19 Q. You've had an opportunity to review the body-worn camera
20 footage of the patrol officer that was present; is that right?

21 A. Yes.

22 MS. HAGAN: Your Honor, at this time the Government
23 would move to introduce Government Exhibit 3, which is the
24 body-worn camera footage worn by one of the patrol officers
25 present.

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1 with the Court's permission, I'd like to start to play it,
2 stop it at certain portions so that I can ask Detective Markel
3 questions. I do not intend to play the body-worn camera
4 footage in its entirety. There are long periods of time where
5 members of law enforcement are searching the residence, so I'm
6 really hoping to focus on just key points pertaining to issues
7 before the Court today.

8 THE COURT: Any objection?

9 MR. NIETO: No, Your Honor.

10 THE COURT: Received, and you may proceed as
11 proposed.

12 MS. HAGAN: Thank you.

13 Okay. Ms. McGuinn, I'd like to go ahead and start the
14 beginning of the body-worn camera footage. If we could just
15 move it to where the sounds starts, close to one minute. And,
16 again, this is Government Exhibit 3, for the record.

17 (A video was played in the courtroom.)

18 MS. HAGAN: Ms. McGuinn, can you pause it right
19 there?

20 THE WITNESS: I'm sorry, ma'am. Does this screen
21 work?

22 MS. HAGAN: Is it not on?

23 THE COURT: That screen's not working.

24 THE WITNESS: Should I turn it on?

25 THE COURT: Hold on. Let the courtroom deputy clerk

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1 handle it.

2 Counsel, are your screens working?

3 MS. HAGAN: Yes, Your Honor.

4 MR. NIETO: Yes, Your Honor.

5 THE COURT: A, call IT; B, let's rig a mic so that
6 the witness can move to the jury box.

7 Go ahead and pick up your things, Detective -- Corporal.
8 Excuse me. Go to the first row of the jury box, come about
9 two-thirds of the way down, situate yourself in front of one of
10 those screens and then we'll rig a mic for you in just a
11 second.

12 THE WITNESS: Okay.

13 THE COURT: Come down to the third screen, assuming
14 it's working.

15 THE WITNESS: It is.

16 THE COURT: I don't think there's going to be enough
17 extension on that. They have to plug it into the floor unit.

18 (Pause in Proceedings.)

19 THE COURT: Give me a mic check, Corporal.

20 THE WITNESS: Check, testing 1, 2.

21 THE COURT: Great.

22 THE WITNESS: All right.

23 THE COURT: You may continue.

24 MS. HAGAN: Thank you.

25 BY MS. HAGAN:

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1 Q. Detective Markel, I'm going to just replay the last --
2 where we started so you have an opportunity to view this first
3 minute of the body-worn camera footage.

4 (Video Resumed.)

5 BY MS. HAGAN:

6 Q. Detective Markel, were you able to hear your voice in the
7 background?

8 A. Yes.

9 Q. And who were you speaking with?

10 A. I was speaking with -- initially I was speaking with the
11 defendant, Mr. Bendann.

12 Q. And is that him that is seated there in the upper portion
13 of the screen?

14 A. Yes, ma'am.

15 Q. And what room or rooms is Mr. Bendann seated in or
16 between?

17 A. It's between -- it's the dining room but it's like right
18 between the kitchen and the dining room.

19 Q. And can you explain for us the exchange that occurred
20 between you and Mr. Bendann?

21 A. Sure. So I was telling him that we were going to take all
22 of our gear off so that we could come in to continue to execute
23 the search warrant, and then he had mentioned that he has an
24 attorney and that he was instructed, I guess, to notify her
25 when -- you know, should this happen. And I explained to him

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1 that I would come back in and speak with him and that I offered
2 to get him some clothing for the time being.

3 Q. And did he indicate he would like clothing?

4 A. Yes.

5 Q. Okay. And from where were you going to retrieve the
6 clothing?

7 A. From his bedroom.

8 Q. And did you retrieve clothing for him?

9 A. I did.

10 Q. Okay. Now, in the -- where we have stopped it here at
11 1:49, is he still wearing the flex cuffs?

12 A. No.

13 Q. And were you the one that removed them from him, do you
14 recall?

15 A. I was not.

16 Q. All right. And so from this point on, do you retrieve
17 clothing for him upstairs?

18 A. Yes.

19 Q. From the bedroom?

20 A. Yes.

21 Q. Okay. And is he given an opportunity to put those clothes
22 on there?

23 A. Yes.

24 MS. HAGAN: Okay. Ms. McGuinn, I'm going to ask that
25 you go ahead and play.

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1 MS. MCGUINN: From that point?

2 MS. HAGAN: If you could go to approximately 3
3 minutes and 30 seconds in.

4 (A video was played in the courtroom.)

5 MS. HAGAN: Can you pause it, Ms. McGuinn?

6 BY MS. HAGAN:

7 Q. Detective Markel, what did you mean just now when you said
8 "We might need him for certain devices"?

9 A. Yes. I didn't want the patrol officer to transport him
10 just yet because we may have needed him for his biometrics,
11 facial recognition, fingerprint, and eyes.

12 Q. In the event that there were electronic devices that were
13 located?

14 A. Yes.

15 MS. HAGAN: Ms. McGuinn, can you move to
16 approximately 7 minutes and 50 seconds in?

17 (Video Resumed.)

18 BY MS. HAGAN:

19 Q. Detective Markel, when this portion of the video started,
20 did you advise Mr. Bendann of his Miranda warnings?

21 A. Yes.

22 Q. And were you doing that verbally by itself or were you
23 also showing him anything in writing?

24 A. I was doing it verbally.

25 Q. And just so that the record is clear, since this

Direct Examination - Shannon Markel

1 conversation's happening in the background of this video, can
2 you just sort of recap for us that exchange after you explained
3 Miranda to Mr. Bendann?

4 A. Sure. So I advised him of his rights. He indicated that
5 he understood and he -- I also advised him that I was
6 interested in speaking with him or conducting an interview with
7 him in regards to the investigation.

8 Mr. Bendann stated that his attorney had advised him not
9 to talk about the case or not to speak with anyone in reference
10 and I just -- I told him that that was fine and that if, you
11 know, if he would like, he could make contact with his attorney
12 and then we could set up an interview for a later date and
13 time.

14 Q. Okay. And then did he ask to use the restroom towards the
15 end of this clip?

16 A. Yes.

17 Q. And was he escorted to a restroom?

18 A. Yes, he was.

19 Q. Do you recall if he was escorted to an upstairs or a
20 downstairs restroom?

21 A. I believe he was escorted upstairs.

22 MS. HAGAN: Okay. Can I, Ms. McGuinn, have you move
23 to 11 minutes into the video?

24 (Video Resumed.)

25 MS. HAGAN: Can you pause that?

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1 BY MS. HAGAN:

2 Q. what did you just show Mr. Bendann?

3 A. I showed Mr. Bendann a copy of the sealing order.

4 Q. what other paperwork did you have with you in the
5 residence during the execution of the search warrant?

6 A. Sure. I had the search warrant itself and I had the
7 operations plan.

8 Q. And while this search warrant was being executed while
9 Mr. Bendann is seated here in this particular area, where did
10 you keep that paperwork?

11 A. It was in my file folder. I had a case file folder, and I
12 kept that -- there was a breakfast bar to the left behind this
13 wall that you cannot see, but there's a breakfast bar right
14 there and I had my paperwork sitting on that.

15 MS. HAGAN: Okay. Ms. McGuinn, can you move to 13
16 minutes into the video?

17 (Video Resumed.)

18 MS. HAGAN: Can you pause it?

19 BY MS. HAGAN:

20 Q. what's happening with Mr. Bendann in that clip?

21 A. He's being escorted upstairs to the bathroom.

22 Q. And after he's permitted to use the bathroom, is he then
23 escorted back down to the same location in that chair?

24 A. Yes, ma'am.

25 Q. And during any of the time periods that we are not

Direct Examination - Shannon Markel

1 playing, was there any questioning of Mr. Bendann?

2 A. No.

3 Q. No interrogation?

4 A. No.

5 Q. Were there any threats that were made to Mr. Bendann?

6 THE COURT: One moment.

7 (Pause in Proceedings.)

8 THE COURT: You may continue.

9 BY MS. HAGAN:

10 Q. Any threats to Mr. Bendann during these time periods?

11 A. No.

12 MS. HAGAN: Ms. McGuinn, I'm going to ask you to move
13 to 27 minutes into the video.

14 (Video Resumed.)

15 MS. HAGAN: Ms. McGuinn, can you pause that?

16 BY MS. HAGAN:

17 Q. The beginning of this clip at 27 minutes into the video,
18 Detective Markel, was that you coming from upstairs?

19 A. Yes.

20 Q. And who is the individual that just followed you, the
21 gentleman with the glasses on?

22 A. Sure. He's the federal forensic technician that was on
23 scene. I believe his name is Detective Shumway.

24 Q. And at this point, have you recovered any electronic
25 devices?

Direct Examination - Shannon Markel

1 A. Yes.

2 Q. And from where was an electronic device recovered and what
3 type?

4 A. We retrieved a cell phone from the night stand in
5 Mr. Bendann's bedroom.

6 MS. HAGAN: Ms. McGuinn, can you move to --

7 BY MS. HAGAN:

8 Q. And why are you then going into the kitchen area at this
9 point?

10 A. I was going into the kitchen area so it could be
11 inventoried on our inventory sheet.

12 MS. HAGAN: Okay. Ms. McGuinn, can you move to 28
13 minutes and 30 seconds in?

14 (Video Resumed.)

15 MS. HAGAN: And stop there, Ms. McGuinn.

16 BY MS. HAGAN:

17 Q. Okay. And looks like you just came back again from the
18 upstairs level?

19 A. Yes.

20 Q. And what were you doing up there again?

21 A. So upon executing the search warrants we will letter each
22 room and sketch the inside of the residence so I was trying to
23 ascertain which letter number correlated with Mr. Bendann's
24 bedroom so I could note it on the inventory sheet.

25 Q. And until this point are there other law enforcement

Direct Examination - Shannon Markel

1 individuals that are there inside the residence documenting the
2 rooms and taking photographs and things of that nature?

3 A. Yes.

4 Q. Okay. And so were you able to confirm which room from
5 which the phone was recovered?

6 A. Yes.

7 MS. HAGAN: If we could just keep letting it play,
8 Ms. McGuinn. Approximately 29 minutes in we're focusing on Mr.
9 Bendann. Thank you.

10 (Video Resumed.)

11 MS. HAGAN: Can you pause it right there?

12 BY MS. HAGAN:

13 Q. Okay. Detective Markel, explain to us what transpired
14 just now.

15 A. Sure. So I had the cell phone that I recovered from his
16 bedroom. I approached the defendant and I presented the cell
17 phone to his face, at which time it didn't immediately
18 recognize his face and it automatically prompted for a passcode
19 to be entered. Mr. Bendann, without prompting, put his
20 passcode into the phone while I was standing next to him.

21 Q. And so explain to us why you took the cell phone and
22 approached him to put it up to his face. To begin with, why
23 did you do that?

24 A. Because it was passcode locked.

25 Q. And is that the reason why you include in search warrants

Direct Examination - Shannon Markel

1 such as this authorization to seize biometric data to unlock
2 this cell phone?

3 A. Yes.

4 Q. And so you held it up to Mr. Bendann's face and what
5 happened?

6 A. So I held it up to his face and it didn't immediately
7 recognize his face and the phone prompted for a passcode, and
8 Mr. Bendann entered his passcode. I'm sorry.

9 Q. That's okay. And when you say it prompted for a passcode
10 because it did not recognize his face, did that prompting occur
11 as you were still holding the phone up to Mr. Bendann?

12 A. Yes.

13 Q. And what did the prompting look like? How did you know it
14 was requesting a passcode?

15 A. Sure. So when I presented the phone to his face, the
16 screen bounced, indicating that it did not recognize his face;
17 and then the number -- the number pad came up with the six
18 digits prompting for a passcode.

19 Q. And did you say anything to him at that point in time?

20 A. No.

21 Q. Did you give him any direction or any commands?

22 A. No.

23 Q. Did you say anything at all out loud?

24 A. No.

25 Q. And after Mr. Bendann entered -- well, as Mr. Bendann

Direct Examination - Shannon Markel

1 entered the passcode, could you see what he entered?

2 A. Yes. I could see -- I could clearly see the first four
3 digits.

4 Q. Do you recall what they were?

5 A. Yes. It was 0701.

6 Q. And did those initial four digits seem familiar to you?

7 A. Yes.

8 Q. And how did you recog -- what did you recognize them as?

9 A. I recognized it as his -- the first four digits of his
10 birthday, but I wasn't completely certain at that time.

11 Q. And he did enter a complete six-digit passcode?

12 A. Yes.

13 Q. But you only saw the first four?

14 A. That's correct.

15 Q. And after he entered the passcode, what did you do with
16 the phone?

17 A. I brought it to Shumway.

18 Q. And --

19 THE COURT: who was holding the phone when the
20 defendant entered the digits?

21 THE WITNESS: I was holding the phone.

22 THE COURT: Next question.

23 BY MS. HAGAN:

24 Q. why did you then hand the phone to Mr. Shumway?

25 A. I handed the phone to Mr. Shumway because he is the

Direct Examination - Shannon Markel

1 federal forensic technician on scene, and I gave it to him to
2 analyze or to take custody of.

3 Q. And is that what's happening as we have frozen the screen
4 here at this moment?

5 A. That's correct.

6 MS. HAGAN: Ms. McGuinn, can you keep playing?

7 (Video Resumed.)

8 MS. HAGAN: Can you pause it?

9 BY MS. HAGAN:

10 Q. Detective Markel, where did you just go?

11 A. I went back to the breakfast bar kitchen area, kitchen,
12 dining room area.

13 MS. HAGAN: Okay. Can you hit play, Ms. McGuinn.

14 (Video Resumed.)

15 MS. HAGAN: Can you pause it, Ms. McGuinn?

16 BY MS. HAGAN:

17 Q. Can you explain what just happened there, Detective
18 Markel?

19 A. Yes. So while I was back at the breakfast bar, I was
20 looking at my operations plan to verify the defendant's date of
21 birth. Two statements are made. The first statement, I was
22 reading the operations plan confirming what I was reading and I
23 said "070184."

24 The second statement I approached the defendant and I was
25 directing a statement in his direction and I said "070184" and

Direct Examination - Shannon Markel

1 he confirmed "Yes."

2 Q. And did you see Mr. Shumway enter the kitchen area in this
3 last clip that we just watched?

4 A. Yes.

5 Q. And did you have a conversation with him when he entered
6 the kitchen area, or do you recall him saying anything to you?

7 A. I believe -- I believe he was trying to confirm the
8 passcode as well and confirm the date of birth as well.

9 Q. And --

10 THE COURT: with whom?

11 THE WITNESS: with me.

12 THE COURT: Next question.

13 BY MS. HAGAN:

14 Q. And did you have an opportunity to look at the operations
15 plan?

16 A. Yes, I did.

17 Q. And did you confirm the date of birth as 07/01/84?

18 A. Yes.

19 Q. And did you relay that verbally to Mr. Shumway?

20 A. I did.

21 Q. And you indicated that you ended up saying it out loud
22 twice?

23 A. Yes.

24 Q. And tell us what Mr. Bendann said in response the second
25 time.

Direct Examination - Shannon Markel

1 A. He said "Yes."

2 Q. And when you said it the second time, do you recall
3 whether you were directing it at Mr. Bendann or Mr. Shumway?

4 A. I was directing it at Mr. Bendann.

5 Q. Okay. Now -- and Mr. Bendann said "Yes," you indicated;
6 is that right?

7 A. Correct.

8 Q. Okay. Now, had Mr. Bendann not responded to you, would
9 you have relayed the 0701 --

10 MR. NIETO: Objection, Your Honor.

11 THE COURT: Sustained. Next question. Calls for
12 speculation.

13 MS. HAGAN: Your Honor, may I be heard on that?

14 THE COURT: Next question. You asked him, "would you
15 have." That was the predicate to your next question.

16 MS. HAGAN: Yes, and one of the Government's
17 arguments is inevitable discovery.

18 THE COURT: I understand that.

19 MS. HAGAN: Okay.

20 THE COURT: But the form of the question nonetheless
21 called for speculation so it's sustained.

22 BY MS. HAGAN:

23 Q. After confirming the date of birth of Mr. Bendann in the
24 operations plan, you did relay that to Mr. Shumway?

25 A. Yes.

Direct Examination - Shannon Markel

1 Q. And so essentially you did have the passcode?

2 A. I did.

3 MS. HAGAN: Court's indulgence.

4 (Pause in Proceedings.)

5 THE COURT: You can't ask a question that overtly
6 asks for speculation. That's why I sustained the objection.

7 MS. HAGAN: Understood, Your Honor.

8 THE COURT: I understand where you're going. It's
9 possible that you could lay a foundation about law enforcement
10 techniques, tactics in these kinds of circumstances. I've read
11 your brief and I understand what the second theory is. It's
12 just that you can't come after it that baldly.

13 MS. HAGAN: Understood, Your Honor.

14 THE COURT: So I'm not cutting off the line of
15 inquiry.

16 MS. HAGAN: Yes.

17 THE COURT: That question was objectionable and
18 that's why I sustained it.

19 MS. HAGAN: I think at this point the information has
20 been elicited, but I will follow up based on Your Honor's
21 comments.

22 BY MS. HAGAN:

23 Q. Detective Markel, was it your intention or law
24 enforcement's intention to attempt a passcode, if known, in
25 addition to the biometric data?

Direct Examination - Shannon Markel

1 MR. NIETO: Objection, Your Honor.

2 THE COURT: Same objection?

3 MR. NIETO: It was also the inclusion of "and law
4 enforcement."

5 THE COURT: okay. objectionable as to her
6 speculating about what others might do. You can ask her about
7 what she does and what her training is and what her strategy is
8 when confronted with this kind of situation.

9 BY MS. HAGAN:

10 Q. Was it your intention, Detective Markel, to obtain the
11 date of birth and passcode for that cell phone?

12 A. Yes.

13 Q. And if you did obtain what you thought was the passcode,
14 was it your intention to relay it to Mr. Shumway?

15 A. Yes.

16 Q. And based on what Mr. Shumway's purpose was there present
17 for the search warrant execution, why was it necessary for you
18 to relay that information to Mr. Shumway?

19 A. So that the device could be analyzed.

20 Q. And my last question, Detective Markel, you indicated that
21 the search warrant, Government Exhibit 1, was signed by Judge
22 Pilarski. District Court or Circuit Court Judge? If you know.

23 THE COURT: would it refresh your memory to look at
24 the search warrant?

25 THE WITNESS: Yes, sir. I just refreshed my memory.

Cross Examination - Shannon Markel

1 District Court Judge.

2 MS. HAGAN: Okay. Thank you.

3 Your Honor, I have nothing further.

4 THE COURT: Okay. Corporal, if you would pick up
5 your papers and so forth and move back to the witness stand
6 where the technology is once again working.

7 THE WITNESS: Sure.

8 THE COURT: And cross-examination, Mr. Nieto.

9 MR. NIETO: My apologies, Your Honor. I'm sorry?

10 THE COURT: Cross-examination?

11 MR. NIETO: Yes, Your Honor.

12 THE COURT: It's still working?

13 THE CLERK: Yes.

14 CROSS EXAMINATION

15 BY MR. NIETO:

16 Q. And good morning.

17 A. Good morning.

18 Q. What is your current rank? Is it corporal?

19 A. It's corporal, sir.

20 Q. Okay. All right. So Corporal, you said you have about 17
21 years of experience in law enforcement, right?

22 A. Yes, sir.

23 Q. And so I have to assume throughout that time you've
24 executed your fair share of search warrants; is that fair to
25 say?

Cross Examination - Shannon Markel

1 A. Yes, sir.

2 Q. All right. And so as part and parcel -- well, if I may,
3 approximately how many search warrants have you participated in
4 the execution of?

5 A. Approximately a hundred.

6 THE COURT: Are you going to use this BWC footage or
7 should we take this down?

8 MR. NIETO: I think she could take it -- I think it's
9 okay to be taken down.

10 THE COURT: Let's go ahead and blank the screen.
11 Thank you. Next question.

12 BY MR. NIETO:

13 Q. All right. Now, as part of the execution of the search
14 warrant, the raid team and the investigators get together in
15 advance to discuss how things are going to happen; is that fair
16 to say?

17 A. Yes.

18 Q. And sometimes that can happen a day or two before but
19 oftentimes it happens the morning of; is that fair?

20 A. Correct.

21 Q. Okay. So on this particular date, I believe you had
22 indicated that the search warrant was executed at 5:18 a.m.,
23 right?

24 A. Yes, sir.

25 Q. And so did you meet with the other law enforcement and

Cross Examination - Shannon Markel

1 members of the tactical raid unit before that?

2 A. Yes.

3 Q. Do you remember approximately what time?

4 A. I believe -- can I check my operations plan?

5 Q. Absolutely, yes.

6 A. Okay. Thank you.

7 THE COURT: Once you've looked at the document,
8 refreshed your memory, put the document down, tell us you're
9 ready to keep going.

10 THE WITNESS: Sure. I believe we briefed at 0500
11 that morning.

12 BY MR. NIETO:

13 Q. Okay. About 5 a.m.?

14 A. Yes.

15 Q. And so -- and I don't expect you to necessarily remember
16 with specificity, but I'm assuming that that day, right, do you
17 remember what time your work shift began that morning?

18 A. Yes. I believe it was 7 o'clock was my work shift start
19 time.

20 Q. And that's 7:00 a.m., right?

21 A. 7:00 a.m.

22 Q. So this is before your work shift technically begins?

23 A. Yes, sir.

24 Q. And so you're getting up, if you're going to meet with the
25 Tactical Unit at 5:00, I mean, you're getting up at least

Cross Examination - Shannon Markel

1 before 4 o'clock; is that fair?

2 A. That's correct, yep.

3 Q. And so as part of your -- when you wake up at 4:00 a.m.,
4 right, maybe you have a cup of coffee, it takes a little bit of
5 time for you to sort of get your senses; is that fair?

6 A. Sure.

7 Q. Okay. And so the decision to execute the search warrant
8 at 5:18 in the morning is a law enforcement decision?

9 A. That's correct.

10 Q. And amongst many of the reasons in support of that, one of
11 it, one of the reasons is because at that hour, chances are the
12 people in the home are going to be asleep, right?

13 A. Correct.

14 Q. And that minimizes the risk of harm to law enforcement or
15 the destruction of evidence, right?

16 A. That's correct.

17 Q. All right. And this was not a no-knock warrant?

18 A. That's correct.

19 Q. Right. So law enforcement at 5:18 start banging on the
20 door to alert the people within the home that they are there to
21 execute this warrant, correct?

22 A. Correct.

23 Q. Okay. And then I believe your testimony was that
24 Mr. Bendann, per your recollection, had opened the door,
25 tactical team goes in, right?

Cross Examination - Shannon Markel

1 A. Correct.

2 Q. Now, the tactical team, they were not dressed the way in
3 which you were dressed in the video, were they?

4 A. No.

5 Q. And they're not dressed the way you're dressed today, are
6 they?

7 A. No.

8 Q. Now, in fact, they had guns that were out?

9 A. Sure.

10 Q. Right? Did they have like a riot shield to get in?

11 A. Yes.

12 Q. Did they have a ram in the off chance they could not open
13 the door?

14 A. Yes.

15 Q. All right. And they had like their full uniforms?

16 A. Yes.

17 Q. Now, this is a tactical unit, so they're not wearing what
18 we may ordinarily associate with police officers; is that fair?

19 A. That's fair.

20 Q. So it's not like the blues; it's -- almost look like
21 fatigues, don't they?

22 A. Yes.

23 Q. Quasi-military vibe to them; is that fair?

24 A. Yes.

25 Q. All right. And so -- and I believe as we were looking at

Cross Examination - Shannon Markel

1 the video, so at least on the main floor, right -- let me take
2 a step back, Corporal.

3 Is it fair to say that the number of law enforcement that
4 entered that house at 5:18 in the morning or at least in
5 general that morning was over a dozen?

6 A. Yes.

7 Q. Okay. Over 20?

8 A. I'm not sure about that.

9 Q. Fair. But a good number of people were in that home,
10 right?

11 A. Correct.

12 Q. All right. And when they enter their home, obviously as
13 you know through your experience, the first thing they want to
14 do is secure the residence?

15 A. Correct.

16 Q. Okay. And by that, they mean they want to make sure
17 there's nobody hiding in a closet or someone else in another
18 room or, I suppose in theory, a victim or someone else in a
19 stage of distress; is that true?

20 A. Correct.

21 Q. All right. So law enforcement in their military fatigues
22 with their guns exposed yell out, right, when they enter the
23 home; is that fair?

24 A. Yes.

25 Q. And that happened in this case, too, right?

Cross Examination - Shannon Markel

1 A. Yes.

2 Q. They start yelling out, if anyone's here, law enforcement,
3 that kind of stuff?

4 A. Yes.

5 Q. And that's also for their protection as well, right?

6 A. Correct.

7 Q. And so while they're yelling, they're walking throughout
8 the house, looking to find anyone or anything in any place?

9 A. Correct.

10 Q. Okay. And Mr. Bendann is present in the home while this
11 is happening, right?

12 A. Yes.

13 Q. Now, this is at 5:18, and I believe as we had seen in the
14 videos Mr. Bendann is in essence in his underwear, right?

15 A. Correct.

16 Q. And so it's based on at least the visual depiction, it
17 wouldn't surprise you to know that he was awakened by the
18 execution of the warrant?

19 A. Correct.

20 Q. Right. And during the time that you saw him sitting
21 there, you didn't see him have coffee or any food or anything
22 like that?

23 A. No.

24 Q. Right. And I believe as we had watched up to roughly
25 about the 30-minute mark, right, when you have the discussion

Cross Examination - Shannon Markel

1 with regards to the passcode with him, do you remember that
2 video that we watched?

3 A. Yes.

4 Q. So even 30 minutes in, that is not even 6 a.m., is it?

5 A. No.

6 Q. Okay. Okay. So you were the affiant or you were the
7 writer of the search warrant?

8 A. Yes, sir.

9 Q. Okay. And so as part of that search warrant, you received
10 permission from the court to get biometric features from
11 Mr. Bendann for the phones or other electronic devices?

12 A. Yes.

13 Q. Okay. And in the 17 years that you've been doing this
14 type of work, cell phones and technologies and computers,
15 everything continues to evolve technologically?

16 A. Yes.

17 Q. Is that consistent with your experiences?

18 A. Yes.

19 Q. All right. So maybe 17 years ago we didn't have to deal
20 with passcodes and facial recognition on cell phones to access
21 it, right?

22 A. Right.

23 Q. But today's day and age that's the way cell phones are
24 working; is that fair?

25 A. That's fair.

Cross Examination - Shannon Markel

1 Q. And so understanding that, you sought permission from the
2 court in advance to allow you to get the biometric features to
3 open the phone, right?

4 A. Correct.

5 Q. And you do that specifically because there is always the
6 danger or risk that you would not be able to access the
7 contents of that device without it?

8 A. Correct.

9 Q. And in fact, I believe the Government had referenced you
10 to Page 14 --

11 A. Yes.

12 Q. -- of the search warrant, specifically for your statement.
13 You say, specifically "Law enforcement personnel may not
14 otherwise be able to access the data contained within the
15 device(s) making the use of biometric features necessary to the
16 execution of the search authorized by this warrant."

17 A. Correct.

18 Q. Right. So entry into the phone is of import to you as an
19 investigator in this case, correct?

20 A. Correct.

21 Q. All right. So when you enter into the home and you begin
22 speaking with Mr. Bendann, I believe you had testified --

23 MR. NIETO: Court's indulgence. All right.

24 THE COURT: Corporal, when Baltimore County executes
25 a search warrant, do they always employ a tactical team?

Cross Examination - Shannon Markel

1 THE WITNESS: No.

2 THE COURT: who made the decision that a tactical
3 team would be employed in this execution?

4 THE WITNESS: My supervising officer as well as the
5 FBI.

6 THE COURT: And what was the reason?

7 THE WITNESS: Destruction of evidence, potential
8 destruction of evidence.

9 THE COURT: Next question.

10 BY MR. NIETO:

11 Q. Corporal, were flash bangs used in the execution of this
12 warrant?

13 A. No.

14 Q. Were there any dogs that were brought to sniff or alert?

15 A. Yes.

16 Q. There were drugs -- I'm sorry, no drugs -- there were
17 dogs, K9s brought to the residence that morning?

18 A. There was one electronic-sniffing K9 dog.

19 Q. Okay. Were there any drones that were utilized in the
20 search of this home?

21 A. I'm not -- I'm aware of. I don't know.

22 Q. Okay. And forgive me, if you could, the -- sniffing the
23 K9 dog, if you could speak a little bit more about that?

24 A. Sure.

25 Q. what type of --

Cross Examination - Shannon Markel

1 A. It was a Frederick County K9 dog. The dog is apparently
2 trained to sniff out electronics.

3 Q. Okay. And was there like a robot that you had -- that law
4 enforcement had used to help in the search of the home?

5 A. I believe so.

6 Q. Okay. So that means in addition to the more than a dozen
7 law enforcement, there was also a dog and a robot that was used
8 to search the home?

9 A. Correct.

10 Q. Okay. Now, and Mr. Bendann was initially handcuffed,
11 correct?

12 A. Yes, sir.

13 Q. But then once you enter and, you know, everyone's secure,
14 he's allowed to put on clothes and the flex cuffs are taken
15 off, right?

16 A. Yes.

17 Q. But he's not allowed to leave, though, right?

18 A. Correct.

19 Q. Now, in fact, I think as we had seen in the video there's
20 a law enforcement officer, not in uniform, but standing right
21 over him when he's seated in the middle of the room, correct?

22 A. Correct.

23 Q. All right. And that's to make sure nothing untoward
24 happens; is that fair to say?

25 A. Correct.

Cross Examination - Shannon Markel

1 Q. All right. So as we watched in the video, you advise
2 Mr. Bendann of his Miranda rights, correct?

3 A. Yes.

4 Q. And at that point in time he invokes his right to have his
5 attorney present --

6 A. Correct.

7 Q. -- before speaking with you, right?

8 A. Yes.

9 Q. All right. And you explained to him, and I think it's
10 actually preceding that but you had explained to him that the
11 warrant was under seal?

12 A. That's correct.

13 Q. And he didn't understand what that meant, but you
14 explained to him what that meant, right?

15 A. Correct.

16 Q. Okay. And then in the process of explaining to him what
17 was going on, you also told him that pursuant to the warrant,
18 you may need his face or hands at some point for certain
19 things?

20 A. Correct, yes.

21 Q. And part of that -- well, not say part of that -- forgive
22 me, Corporal -- but you're saying that because you had court
23 authorization to use his face or his fingerprint to be able to
24 get into the electronic devices?

25 A. Correct.

Cross Examination - Shannon Markel

1 Q. But you didn't explain that to him the way in which you
2 explained the sealed warrant, did you?

3 A. No, I did not.

4 Q. Right. And so after the cell phone has been recovered
5 from the upstairs, you have the phone and you walk to
6 Mr. Bendann who's seated in the chair, right?

7 A. Yes, sir.

8 Q. And then you holding the phone, you put it right in front
9 of his face, correct?

10 A. Correct.

11 Q. And this is, of course, after telling him that pursuant to
12 the warrant, right, pursuant to the Court authorization you're
13 going to need his face at some point?

14 A. Yes.

15 Q. And so you put that phone in front of his face, right, and
16 the screen is like most iPhones, right, which will give you the
17 opportunity for the facial recognition?

18 A. Correct.

19 Q. Is that what happened in this case?

20 A. That is, yes.

21 Q. Okay. But that doesn't work, right? The phone -- it is
22 not able to get into the phone?

23 A. Right.

24 Q. But you're still holding the phone when the portion for
25 the keypad pops up?

Cross Examination - Shannon Markel

1 A. Correct.

2 Q. And when the keypad pops up on the iPhone, that's an
3 opportunity for someone to enter in their passcode to get into
4 the phone, right?

5 A. Correct.

6 Q. And this is, of course, the passcode that you want?

7 A. Right.

8 Q. And in order to enter into -- I guess in order to enter
9 the passcode into the phone, most people use their hands, don't
10 they?

11 A. Yes.

12 Q. All right. And so while you're still holding the phone in
13 front of his face, that prompt comes up, and then Mr. Bendann,
14 pursuant to your testimony, enters in the passcode, right?

15 A. Right.

16 Q. You didn't say anything at that moment, did you?

17 A. No.

18 Q. No. But, again, previously you had explained to him that
19 you had court authorization to use his hands for certain things
20 while he's there, right?

21 A. Right, correct.

22 Q. And you had just put the phone in front of his face
23 without requesting or explaining to him what you were doing,
24 right?

25 A. Correct.

Cross Examination - Shannon Markel

1 Q. And so it's not unreasonable for law enforcement to think
2 that in that context, the suspect might think that they have to
3 comply and enter in the passcode, right?

4 A. Yes.

5 Q. Exactly.

6 MR. NIETO: Court's indulgence, if I might.

7 THE COURT: Yep.

8 BY MR. NIETO:

9 Q. And Corporal, after you -- strike that.
10 when Mr. Bendann answers the passcode, as we talked about,
11 you're still holding the phone, right?

12 A. Yes.

13 Q. And so while you're holding the phone, you're able to look
14 and see at what he's entering onto the phone and the keypad?

15 A. Yes, correct.

16 Q. But you can't see the whole thing but you see at least the
17 first four digits, right?

18 A. Correct.

19 Q. All right. And so you are endeavoring to determine if
20 that is his birth date, right?

21 A. Correct.

22 Q. Because a birth date's a pretty -- you know, that could be
23 used for passwords for phones, right?

24 A. Sure.

25 Q. That's not uncommon, is it?

Redi rect Exami nation - Shannon Markel

1 A. It's not uncommon, no.

2 Q. Right. And so I think as we've see in the video you
3 direct a question to Mr. Bendann in which you're seeking to
4 confirm that password or that passcode, right?

5 A. Correct.

6 Q. And so when he's seated there, sort of offhandedly you
7 turn towards him and you repeat out the numbers, right, 070184?

8 A. Correct.

9 Q. And then he confirms that is the passcode, right?

10 A. Correct.

11 Q. And that is presumably the same passcode that you had seen
12 him enter into the phone?

13 A. Correct.

14 Q. While you were holding it?

15 A. Yes.

16 Q. And, of course, this is all subsequent to that initial
17 statement you made to him when you entered that house about how
18 you had court authorization to use his face or hands for
19 certain things, right?

20 A. Correct.

21 MR. NIETO: All right. Thank you, Your Honor. No
22 further questions.

23 THE COURT: Redirect?

24 REDI RECT EXAMI NATION

25 BY MS. HAGAN:

Redirect Examination - Shannon Markel

1 Q. Detective Markel, you were asked about the decision to
2 have the Tactical Unit present and you indicated that they were
3 there because there was a concern of destruction of evidence.
4 Do you recall that testimony?

5 A. Yes.

6 Q. Do you recall whether in the affidavit for this particular
7 search warrant you included specific evidence of deletion of
8 evidence?

9 MR. NIETO: Your Honor, forgive me, I'd like to
10 object. I think it's outside the scope of my cross.

11 THE COURT: It is, and the affidavit will speak for
12 itself when it's available. It's in evidence and available to
13 the Government for argument already.

14 Next question.

15 BY MS. HAGAN:

16 Q. You were asked about the fact that you showed the sealing
17 order to Mr. Bendann. Do you recall that?

18 A. Yes.

19 Q. But you did not show him the search warrant affidavit that
20 explained the use of biometrics; is that right?

21 A. That's correct.

22 Q. And why did you not show Mr. Bendann the actual search
23 warrant affidavit?

24 A. Because it was sealed and we didn't want pertinent facts
25 of the case to be out at this time. It was still under

Redirect Examination - Shannon Markel

1 investigation.

2 Q. Are you familiar or had you used prior to the search
3 warrant execution the use of facial recognition biometrics to
4 open a cell phone?

5 A. Yes.

6 Q. How does one physically obtain facial recognition
7 biometrics to open a cell phone?

8 A. By presenting the device to the person who I guess owns
9 the phone, presenting the device to their face.

10 Q. And to your knowledge is that the only way to trigger the
11 facial recognition?

12 A. To my knowledge, yes.

13 Q. And in the clip that was played, four minutes into the
14 body-worn camera footage when you say out loud, "We might need
15 him for certain devices," who were you speaking with?

16 A. I was speaking with the patrol officer on scene.

17 Q. And then at some point did you also relay that information
18 to Mr. Bendann?

19 A. Yes, I did.

20 MS. HAGAN: Okay. Nothing further, Your Honor.

21 THE COURT: May the witness be excused?

22 MS. HAGAN: Yes.

23 THE COURT: Mr. Nieto, may the witness be excused?

24 MR. NIETO: Yes. Yes, Your Honor.

25 THE COURT: You may be excused.

Direct Examination - Jon Shumway

1 THE WITNESS: Thank you, Your Honor.

2 MS. HAGAN: Your Honor, the Government's next witness
3 is Jon Shumway.

4 THE COURT: Jon Shumway, please come forward. All
5 the way up here to the witness stand, sir, and stop there and
6 face our clerk.

7 THE CLERK: Good morning, sir. Please raise your
8 right hand.

9 (Jon Shumway was duly sworn.)

10 THE CLERK: Please adjust that microphone and speak
11 directly into it. If you don't mind stating and spelling your
12 first and last name for the record.

13 THE WITNESS: My name is --

14 THE COURT: The microphone's got to be within about
15 two inches of your face, okay? So sit back in the chair and
16 pull the mic back to you.

17 THE WITNESS: How's that?

18 THE COURT: Close but not quite. A little closer. A
19 little closer. Let's try that. Go ahead.

20 THE WITNESS: My name is Jon, J-o-n, Shumway,
21 s-h-u-m-w-a-y.

22 THE COURT: Your witness.

23 DIRECT EXAMINATION

24 BY MS. HAGAN:

25 Q. Good morning, Mr. Shumway.

Direct Examination - Jon Shumway

1 A. Good morning.

2 Q. Can you tell us where you were employed in January of
3 2023?

4 A. I was employed by the Federal Bureau of Investigation in
5 Linthicum, Maryland as a computer forensic examiner.

6 Q. And how long were you a computer forensic examiner with
7 the FBI?

8 A. Directly for the FBI 15 years.

9 Q. Okay. And is that your background, your specialty area?

10 A. It is, yes.

11 Q. And as a forensic examiner, what were your primary
12 responsibilities?

13 A. Along with doing computer and digital media forensics, I
14 would often assist on search scenes for the seizure of digital
15 materials.

16 Q. Would you mind telling us a little bit about your specific
17 background and training in that area?

18 A. I've got extensive training through several places:
19 National White Collar Crime Center; IACIS, which is the
20 International Association of Computer Investigative
21 Specialists; I'm Encase certified; I am also FBI CART, which is
22 Computer Analysis Response Team, certified as a senior examiner
23 at that time.

24 Q. And did you retire from the FBI?

25 A. Yes, I did, in August of this past year.

Direct Examination - Jon Shumway

1 Q. And are you currently employed?

2 A. I am. I work for -- as a contractor for the Department of
3 Defense at the Defense Cyber Crime Center.

4 Q. And are you working in a similar area?

5 A. Exactly the same area.

6 Q. Okay. Prior to working for the FBI, were you employed in
7 any law enforcement capacity?

8 A. I was a police officer in the City of Niagara Falls, New
9 York for 24 and a half years. The last seven and a half of
10 those I was on temporary duty to the FBI at the Regional
11 Computer Forensics Lab in Buffalo.

12 Q. Mr. Shumway, I'm going to direct your attention to the
13 search warrant execution in this case that occurred at 115
14 Stanmore Road. Were you present for the execution of that
15 search warrant?

16 A. Yes, I was.

17 Q. And what was your role?

18 A. To assist the agents in the seizure of digital evidence or
19 digital devices.

20 Q. And where were you located within the residence when the
21 search was taking place?

22 A. Primarily, until the search scene is secured, as I am not
23 sworn law enforcement, for security purposes I wait outside.
24 Once the scene is secure, we come in and we assist in locating
25 devices. Primarily in this case I was in the living room of

Direct Examination - Jon Shumway

1 the residence.

2 Q. And when you made entry into the residence, was it at the
3 same time as Baltimore County Police Detective Shannon Markel,
4 do you recall?

5 A. It was after she got there.

6 Q. Okay. And are you familiar with -- or were you familiar
7 with the target of the investigation, Mr. Christopher Bendann?

8 A. Through the paperwork that I was shown, yes.

9 Q. And when you entered the residence after it was cleared,
10 do you recall where you saw Mr. Bendann?

11 A. He was sitting in the kitchen/dining room in the entryway
12 to the living room in a chair facing the living room.

13 Q. And did you have any direct contact or conversation with
14 Mr. Bendann?

15 A. Not immediately, no.

16 Q. Did there come a point in time when a cell phone was
17 recovered and brought to you?

18 A. Yes.

19 Q. And can you tell us specifically what you recall
20 happening?

21 A. It was an iPhone. I don't recall which model at this
22 point, but it was on and screen-locked. As it was made -- I
23 was made aware that biometrics were included in the search
24 warrant, and what that means, basically, is either a thumb or a
25 face can be used to unlock the device. I was handed the device

Direct Examination - Jon Shumway

1 and determined that it was locked.

2 Q. who handed you the device?

3 A. I believe it was Shannon.

4 Q. And by Shannon, do you mean Detective Markel?

5 A. Yes, I do.

6 Q. Do you recall where this exchange occurred, where in the
7 residence?

8 A. It would have been in the living room.

9 Q. Okay. She handed you the device and you noted what about
10 it?

11 A. That it was locked. And I walked over to Mr. Bendann and
12 held it up to his face for the biometrics to unlock it. It did
13 not work, but he entered the code voluntarily for us, and it
14 was opened.

15 Q. When Detective Markel first handed you the phone, had it
16 been unlocked to your knowledge?

17 A. It was locked when it was handed to me.

18 Q. Okay. And what was your intent -- what were you intending
19 to do once she handed you the phone?

20 A. You want to do a couple of things. One is you want to get
21 it into airplane mode so as little of the data will change as
22 possible. You can prevent nefarious activities happening to
23 the phone once you've disconnected it from networks. And then
24 you want to, as we didn't know the PIN code, you want to gather
25 as much information at that time as you can about potential PIN

Direct Examination - Jon Shumway

1 codes, so you want to go into the settings area and look at
2 stored passwords.

3 Q. And were you able --

4 THE COURT: One moment, Counsel.

5 (Pause in Proceedings.)

6 THE COURT: You may continue.

7 MS. HAGAN: Ms. McGuinn, I'm going to ask you to cue
8 Government Exhibit 3 up to approximately 29 minutes and 10
9 seconds into the video.

10 Actually, Your Honor, do we have to have Mr. Shumway step
11 to the jury box so he can see or is it on?

12 THE COURT: No. We surprisingly were able to fix it.

13 MS. HAGAN: Okay.

14 (A video was played in the courtroom.)

15 MS. HAGAN: Can you pause it, Ms. McGuinn?

16 BY MS. HAGAN:

17 Q. Mr. Shumway, is that you in the center of the screen?

18 A. Yes, it is.

19 Q. And that is the cell phone that Detective Markel handed to
20 you?

21 A. Yes, it is.

22 Q. What are you doing right now with the cell phone?

23 A. At that point, I'm going to settings, passwords.

24 Q. Okay. So when she handed it to you, was the phone open so
25 that you could put it in airplane mode and get to the

Direct Examination - Jon Shumway

1 passwords?

2 A. To correct my previous statement, yes. But it was not --
3 the passwords was not open; the phone was open.

4 Q. Okay. So the phone was open and so what were you
5 permitted to do right at that moment?

6 A. At that point, I'm permitted to triage it to see if
7 there's anything extremely relevant, put it into airplane mode,
8 and again, as we don't know the PIN code to get in it, one of
9 the first things we do while we still have the biometrics
10 authorization in the warrant is get into the passwords that are
11 stored in it to see if there's hints to it.

12 Q. Okay. And so you were able to put it in airplane mode?

13 A. Yes.

14 Q. And I'm going to ask Ms. McGuinn to hit play, but what do
15 you recall happening as you were attempting to go into the
16 different applications on the cell phone?

17 A. At this point the only application I would be going into
18 was the stored passwords, and it would have brought up a screen
19 requiring the biometrics again.

20 Q. Okay.

21 A. It will give you a warning that it failed, try again.

22 Q. Okay.

23 A. And I would stop at that point, too many tries, and it
24 would fail altogether. So I believe at that point, we went
25 back to Mr. Bendann to get his face to look at it again.

Direct Examination - Jon Shumway

1 MS. HAGAN: Okay. Ms. McGuinn, can you hit play?

2 (Video Resumed.)

3 MS. HAGAN: Can you pause it, Ms. McGuinn?

4 BY MS. HAGAN:

5 Q. The portion that we just saw, Mr. Shumway, did you hold
6 the cell phone back up to Mr. Bendann's face?

7 A. Yes, I did.

8 Q. And now you're walking away from him after you have placed
9 the phone up to his face?

10 A. I had placed it up to his face, but for whatever reason,
11 could have been the angle and whatever, it did not unlock the
12 passwords.

13 Q. And so you then walked away from Mr. Bendann?

14 A. Because I had the password at that point.

15 Q. Right now in the video?

16 A. Yes.

17 Q. And how did you have the password at that point?

18 A. Mr. Bendann actually stated without being asked, "Why
19 don't you just use my PIN code, it's 070184."

20 Q. And when did he say that in relation to what we just
21 watched?

22 A. When I was still standing right in front of him.

23 Q. So the part that we just watched, you've walked up to
24 Mr. Bendann, you've placed the cell phone up to his face, your
25 testimony is that that factual recognition did not work and it

Direct Examination - Jon Shumway

1 prompted the passcode?

2 A. Yes.

3 Q. And at that point, Mr. Bendann said what to you?

4 A. He said, "why don't you use my PIN code, it's 070184."

5 MS. HAGAN: Okay. Can we hit play, Ms. McGuinn?

6 (Video Resumed.)

7 BY MS. HAGAN:

8 Q. who were you looking for right now?

9 A. I was going back to see the other agents in the kitchen.

10 Q. Pause, please.

11 And when you walk back into the kitchen, what happened?

12 who did you see?

13 A. I don't recall specifically who I saw in the kitchen at
14 that point.

15 Q. Did you just watch the clip we just played?

16 A. Yes, but I didn't see who else was in there.

17 Q. Okay. Did you see Detective Marke1 when you went back
18 into the kitchen?

19 A. She was in there, yes.

20 Q. Okay. Tell us what happened that's out of view on this
21 body-worn camera footage. what happened when you walked back
22 into the kitchen?

23 A. At that point I would have just advised that I'm going to
24 take it out to my mobile forensics lab and start to do an
25 acquisition of it.

Direct Examination - Jon Shumway

1 Q. Okay. And did you hear Detective Markel in the clip we
2 just played call out "070184"?

3 A. Yes, I did.

4 Q. And do you recall how that happened?

5 A. Just for verification. I can only make an assumption --

6 Q. Okay.

7 A. -- that she called it out to make sure that everybody was
8 clear on the PIN code.

9 Q. Okay. When you went back into the kitchen, had you
10 already entered that PIN code?

11 A. Mr. Bendann actually had unlocked it himself and then
12 volunteered the information, so it was unlocked and the
13 passwords was unlocked.

14 Q. Okay. I'm going to just go back to --

15 MS. HAGAN: Ms. McGuinn, I'm going to ask you to play
16 starting at 29 minutes and 10 seconds.

17 BY MS. HAGAN:

18 Q. Mr. Shumway, I'm going to ask you to watch Mr. Bendann in
19 the background.

20 (Video Resumed.)

21 MS. HAGAN: If you can pause it, Ms. McGuinn.

22 BY MS. HAGAN:

23 Q. Mr. Shumway, did you just see the interaction between you
24 and Detective Markel?

25 A. Yes, I did.

Direct Examination - Jon Shumway

1 Q. Now, at that point, if we can just go back to when you
2 indicated that the phone was prompting you for the facial
3 recognition again, correct that you walked up to Mr. Bendann
4 and placed it to his face?

5 A. That is correct.

6 Q. Okay. And what happened when you placed it up to his
7 face?

8 A. It didn't unlock the area I needed it to unlock and he
9 voluntarily recited his passcode and said "why don't you use my
10 PIN code."

11 Q. And then did you seek out Detective Markel?

12 A. Yes, it appears I did.

13 Q. And did you locate her in the kitchen?

14 A. Yes.

15 Q. And what, if anything, did you tell her or ask her?

16 A. I would have said something about we've got it. I may
17 have asked if she had heard the PIN code or just so it gets
18 documented.

19 Q. Okay.

20 A. But I don't recall specifically what our interaction in
21 the kitchen was at that point.

22 Q. Okay. And then were you able to access the phone at that
23 point?

24 A. Yes.

25 MS. HAGAN: okay. Court's indulgence.

Cross Examination - Jon Shumway

1 Nothing further, Your Honor.

2 THE COURT: Cross?

3 MR. NIETO: Yes, Your Honor.

4 CROSS EXAMINATION

5 BY MR. NIETO:

6 Q. Now, Mr. Shumway, your recollection of this event -- of
7 this event isn't crystal clear, is it?

8 A. Not every specific incident, no, sir.

9 Q. And, again, that makes sense because there is over a year
10 ago, right?

11 A. Right.

12 Q. So no one can be expected to remember every single detail
13 of something that happened 14 months ago, right?

14 A. Not every detail, no.

15 Q. Right. And you've been participating in search warrants
16 in this similar capacity before and after that, right?

17 A. Yes.

18 Q. Right, okay. So but as best you can recall in terms of
19 what you were sitting outside waiting for the search warrant to
20 be executed at the beginning, do you remember that, sir?

21 A. Yes, sir.

22 Q. Okay. Now, I know it was early in the morning a little
23 bit after five; is that about right?

24 A. Five or six. Generally search warrants were after six but
25 I don't recall specifically the time on this one.

Cross Examination - Jon Shumway

1 Q. And I'm sorry, sir, did you say generally search warrants
2 are executed after six or around six?

3 A. As a general rule, yes.

4 Q. Okay. All right. So is it light out?

5 A. I don't believe it was light out at that point.

6 Q. Okay. But the neighborhood in which this house was
7 located, right, you were parked in your car sitting on the
8 street?

9 A. In our mobile forensic van, yes.

10 Q. And it is a fairly nice neighborhood, right?

11 A. I didn't pay that close attention to the neighborhood. I
12 was more focused on what I was going to be doing.

13 Q. When you're sitting there just waiting, right, while
14 they're breaking in -- or they're going in through the door,
15 you're going to be looking around, right?

16 A. Not really.

17 Q. No?

18 A. No.

19 Q. Not looking at your surroundings?

20 A. Sometimes we're not even right there as they're going
21 through the door. Sometimes we're, you know, a block or two
22 away waiting to pull up. It's not good practice to be in front
23 of a location if there's going to be an incident.

24 Q. All right. So were you a block or two away from the house
25 that was being searched?

Cross Examination - Jon Shumway

1 A. When entry was made I believe we were, yes.

2 Q. Okay. But you don't have any recollection as to the
3 nature of the neighborhood where you were parked?

4 A. I don't.

5 Q. Okay. Well, did you participate in the pre-raid
6 debriefing? And forgive me, perhaps that's the wrong
7 terminology. Before the raid, were you -- did you participate
8 in a meeting with other law enforcement to discuss what was
9 going to happen?

10 A. Yes.

11 Q. Okay. And during that meeting, did anybody alert you or
12 the others to say this is a high-crime area?

13 A. No.

14 Q. Did anyone say this is a dangerous neighborhood, be on the
15 lookout or be cautious?

16 A. No.

17 Q. Nothing like that, right?

18 A. Not that I recall.

19 Q. Right. And that's something you would have recalled,
20 right, because if it's a dangerous neighborhood, you're going
21 to be conscientious of that, right?

22 A. As a retired police officer, every neighborhood has the
23 potential to be a dangerous neighborhood in any given
24 situation, sir.

25 Q. Okay. But for this situation and this neighborhood, you

Cross Examination - Jon Shumway

1 don't have any recollection of any information that indicates
2 that it was a dangerous neighborhood, correct?

3 A. Correct.

4 Q. All right. Now, I think you had previously testified
5 that -- at the beginning of your testimony that you were the
6 individual that put the phone up to Mr. Bendann's face where he
7 entered in his passcode, right?

8 A. Yes. And I corrected that, I was not -- the second time I
9 was not but not the first time.

10 Q. Absolutely, sir. That was just a mistake, right?

11 A. It was.

12 Q. But in your mind you remembered -- you know, when you
13 think about this you remembered putting the phone in front of
14 his face and then him entering the passcode, right?

15 A. Yeah. At some point, yes.

16 Q. But that's not actually what happened with your
17 interactions with him, right?

18 A. Well, it did. I did hold it to his face for the passwords
19 or the face, yeah.

20 Q. Right, but he didn't enter the passcode, did he?

21 A. Yes, he did.

22 Q. He did enter the passcode?

23 A. Yes, and then asked why we don't just use his PIN code.

24 Q. Oh, so he did enter the passcode in for you?

25 A. Yes.

Cross Examination - Jon Shumway

1 Q. And still said afterwards "why don't you just use my
2 passcode"?

3 A. Yes.

4 Q. The one that he just entered in for you?

5 A. Yes.

6 Q. All right. The same one that we see then-Detective Marke
7 confirming to Mr. Bendann, right?

8 A. Yes.

9 Q. Okay. Now, you were aware that this search warrant
10 allowed for biometric capture?

11 A. Correct.

12 Q. Right? And that's not on every warrant, is it?

13 A. It's on more warrants as more biometrics have become
14 available on devices, yes.

15 Q. And that's important because it can be difficult to access
16 electronic devices without them, right?

17 A. Correct.

18 MR. NIETO: Okay. Nothing further, Your Honor.

19 THE COURT: Redirect?

20 MS. HAGAN: No, Your Honor.

21 THE COURT: And may the witness be excused?

22 MS. HAGAN: Yes.

23 MR. NIETO: Yes, Your Honor.

24 THE COURT: You're excused, sir. You may depart.

25 THE WITNESS: Thank you.

Direct Examination - Patrick Winn

1 MS. HAGAN: Your Honor, the Government's final
2 witness, who is brief, is Patrick Winn.

3 THE COURT: Please come forward.

4 THE CLERK: Good afternoon, sir -- or good morning,
5 actually. Please raise your right hand.

6 (Patrick Winn was duly sworn.)

7 THE CLERK: Please adjust that microphone so you're
8 speaking directly into it. If you don't mind stating and
9 spelling your first and last name for the record.

10 THE WITNESS: My name is Patrick Winn.
11 P-a-t-r-i-c-k, last name is W-i-n-n.

12 THE COURT: Your witness.

13 DIRECT EXAMINATION

14 BY MS. HAGAN:

15 Q. Mr. Winn, how are you employed?

16 A. I'm a director of special projects at a company called
17 C2Integration.

18 Q. What type of work do you do for them?

19 A. Analytical work.

20 Q. Directing attention to January 2023, where were you
21 employed?

22 A. I was a Special Agent with the Federal Bureau of
23 Investigation.

24 Q. And how long were you a Special Agent with the FBI?

25 A. Approximately 20 years.

Direct Examination - Patrick Winn

1 Q. When did you retire?

2 A. In January of '24.

3 Q. Okay. Mr. Winn, were you present to assist with the
4 execution of a search warrant at 115 Stanmore Road in
5 Baltimore?

6 A. Yes.

7 Q. And what was your role during the execution of that search
8 warrant?

9 A. I was there to assist as needed. During the search
10 warrant I was asked to stand with the defendant in this case
11 just to provide security to make sure he wasn't to leave and
12 wasn't going to pose any danger or harm to anybody in the
13 search.

14 Q. And was that your primary role during the search warrant
15 execution was to stand by Mr. Bendann?

16 A. Yes.

17 Q. And do you recall where that took place in the residence?

18 A. It was I think in the dining room, between the dining room
19 and the living room.

20 Q. And did you communicate at all with Mr. Bendann while
21 standing there for safety reasons?

22 A. Yes.

23 Q. And in what way, what type of communication did you have
24 with him?

25 A. We were there for a significant period of time,

Direct Examination - Patrick Winn

1 approximately an hour or more, so it was small talk. Nothing
2 of consequence was discussed. I think we talked about puzzles,
3 we talked about baking and other noninvestigative-related
4 topics.

5 Q. So nothing pertaining to this case?

6 A. Correct.

7 Q. Anything pertaining to his legal rights?

8 A. No.

9 Q. Did it remain just as small chitchat-type topics?

10 A. Yes.

11 Q. And I'm just going to show you a quick clip of Government
12 Exhibit 3, Mr. Winn.

13 MS. HAGAN: Ms. McGuinn, can you start playing the
14 body-worn camera footage at Minute 28?

15 (A video was played in the courtroom.)

16 MS. HAGAN: Ms. McGuinn, can you stop it?

17 BY MS. HAGAN:

18 Q. Is that you in the background of Government Exhibit 3 on
19 the screen, Mr. Winn?

20 A. Yes.

21 Q. And we can see you in your entirety here engaging in
22 conversation. Did Mr. Bendann also engage back in
23 conversation?

24 A. Yes, he did.

25 Q. And were you able to hear or could you tell in the clip

Direct Examination - Patrick Winn

1 that was played what you were talking about with Mr. Bendann?

2 A. The audio wasn't great but I did hear I said the word
3 "thousand" and I believe to Mr. Bendann's right there was a
4 table and there was some puzzles, so I believe we were talking
5 about puzzles and how many pieces his puzzle had. At the time
6 I was doing puzzles and I had done some but nothing up to a
7 thousand pieces so we had a conversation about that.

8 Q. How would you describe your tone during your
9 communications with Mr. Bendann?

10 A. Calm.

11 Q. How would you describe his demeanor and tone when he
12 responded in these conversations?

13 A. Also calm.

14 Q. Did you make any threats to Mr. Bendann as you stood there
15 guarding him?

16 A. No.

17 Q. Did you induce or coerce him in any way as you stood there
18 with him?

19 A. No.

20 MS. HAGAN: Nothing further, Your Honor.

21 THE COURT: Cross?

22 MR. NIETO: None, Your Honor.

23 THE COURT: May the witness be excused?

24 MS. HAGAN: Yes, Your Honor.

25 MR. NIETO: Yes, Your Honor.

Motions Hearing 5/9/24

1 THE COURT: You're excused and you may depart.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 MS. HAGAN: Your Honor, that concludes the
5 Government's evidence with respect to the particular motion ECF
6 79.

7 THE COURT: So I'll hear argument on this motion now
8 and then we'll move on to the other motion in due course.

9 Mr. Nieto, let's start with you.

10 MR. NIETO: And, yes, Your Honor. We don't have any
11 witness to call for this motion either.

12 THE COURT: Thank you for clarifying that.

13 MR. NIETO: Absolutely, Your Honor. And so
14 respectfully, our --

15 THE COURT: How many times was your client
16 encountered by law enforcement in reference to putting in the
17 password to open the phone?

18 MR. NIETO: I believe, Your Honor, based on the
19 testimony today, it was at least two times.

20 THE COURT: What's the defense position on the first
21 of those two? When did that happen and where did it happen?

22 MR. NIETO: So Your Honor, at the time of the
23 execution of the search warrant, obviously Mr. Bendann is
24 Mirandized and not allowed to leave, he invokes his right to
25 remain silent. Law enforcement locates this electronic device

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1 upstairs. As we saw in the testimony and the video, Detective
2 Markel brings the phone down. That is, I assume, the first
3 reference which Your Honor is referencing?

4 THE COURT: Well, I want to know what the defendant's
5 position is with respect to this, but your position so far is
6 there were two encounters.

7 MR. NIETO: Yes, Your Honor.

8 THE COURT: That were directed at this issue.

9 MR. NIETO: Yes, Your Honor.

10 THE COURT: What's the password to open the phone,
11 and we're describing from the defense perspective the first of
12 those incidents.

13 MR. NIETO: Yes, Your Honor. And the crux of our
14 issues with regards to this motion is that when then-Detective
15 Markel approached Mr. Bendann, at the very, very beginning she
16 made that statement that said "Pursuant to the search warrant,
17 we're going to need your face and hands at some point to do
18 certain things."

19 A reasonable person in that circumstance, taking the
20 totality of circumstances, would believe that they had a court
21 order that required them to provide that information. That's
22 why -- that's exactly why the detective relayed that
23 information pursuant to the search warrant we're going to need
24 your face and hands.

25 So when at the first instant when Detective Markel comes

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1 again with no precursor or forewarning, the likes of which she
2 had done in relation to the sealment, doesn't explain, doesn't
3 ask, just puts the phone in his face and it doesn't work while
4 it's holding in front of his face, again, under this umbrella,
5 this tint of saying we -- the Court is requiring you to give us
6 your face and your hands. When it's prompted for the passcode
7 Mr. Bendann, pursuant to the testimony, then enters it in.

8 THE COURT: And so the defense argument seems to be
9 that the logical inference that a person reasonably draws from
10 the totality of those circumstances is that a court order that
11 says that we may need your face and hands implies more than the
12 mere touching of the phone to transfer information in one's
13 fingerprint onto the screen and instead, or in addition,
14 implies an obligation, court-ordered, to use your digits and to
15 use them in a particular way to convey private information.

16 MR. NIETO: In essence, yes, Your Honor. It's our
17 position that the entry of his passcode was not voluntary based
18 on the totality of circumstances.

19 THE COURT: But that's based on an argument that he
20 reasonably drew the inference from the statement of the
21 detective that you're court ordered to supply to us your face
22 and your fingers that he reasonably inferred and objectively a
23 person would believe they're being told, oh, I've been court
24 ordered to not just touch the phone but to use my fingertips to
25 convey certain information that's private and known only to me.

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1 MR. NIETO: Yes, Your Honor. A reasonable person in
2 those circumstances would have felt that was their obligation.

3 THE COURT: All right.

4 MR. NIETO: And again, Your Honor, I understand the
5 Court's question but, again, just in the totality of
6 circumstances here, it was the manner in which this encounter
7 was prefaced. It was with Detective Markel making that caveat,
8 that explanation to Mr. Bendann, that a reasonable person would
9 have inferred.

10 Now, Your Honor, we know based on the testimony that the
11 hand or the finger that they're referencing is for their finger
12 to be able to enter the phone.

13 THE COURT: Fingerprint.

14 MR. NIETO: Fingerprint, yes, Your Honor. But, of
15 course, that is based on testimony from law enforcement with
16 over, you know, decades of experience. We're talking about a
17 reasonable person here who's not involved in law enforcement.
18 This is pre-6 a.m., essentially just awoken by 15 people with
19 guns and fatigues searching the house. Yes, to be sure, they
20 allowed him to put on pants, they took off the flex cuffs while
21 he had FBI agents standing over him. You're right. So in that
22 sense, that was not coercive but, Your Honor, in the totality
23 of circumstances, when the detective comes in and says we have
24 a warrant, it's sealed, you don't get to see it, and we're
25 going to need your face and hands and then in a short time

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1 later puts the phone in the face very clearly for the purposes
2 of entering the phone. A reasonable person would have felt
3 that they were required to do that. So the introduction --

4 THE COURT: You don't contend that Markel said
5 anything that wasn't true?

6 MR. NIETO: Correct, Your Honor. It was not a lie,
7 it was not a misrepresentation. But the intent behind the
8 statement is relevant in the analysis of what a reasonable
9 person would have inferred or believed based on the totality of
10 everything that was occurring.

11 So I'm not suggesting Detective Markel at that time did
12 anything untoward. What I'm suggesting is that by having said
13 that, by having to create this comfortable environment and
14 saying a few things not appreciating the significance of what
15 it would have on the listener, that is what makes it
16 involuntary.

17 An officer can approach anyone on the street and have a
18 perfectly fine conversation. That person is free to leave. In
19 this situation Mr. Bendann was not. And if someone says, do
20 you find if I search or can I do this or that, you know, the
21 analysis is whether a reasonable person would have felt they
22 could have said no.

23 THE COURT: Okay. So you agree, though, that if
24 Markel lawfully obtained that password in that interaction at
25 that moment, then what happens subsequently is irrelevant.

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1 MR. NIETO: For purposes of the motion, perhaps, Your
2 Honor, for the legal analysis.

3 THE COURT: Okay. So to the extent that Markel
4 subsequently engaged in an illegal custodial interrogation of
5 your client specifically asking him if -- whatever it is.

6 MR. NIETO: 070184.

7 THE COURT: -- 070184, you know, and gets from him an
8 affirmation that, yeah, that's my date of birth, and were the
9 Court to find that that was not simply the solicitation of
10 basic identifying information which a police officer is
11 entitled, arguably, to gather even when a person has asserted
12 Miranda but was instead in the circumstances and context of
13 this case actually interrogation about a matter of substance,
14 the answer to which was incriminating to your client, it
15 wouldn't matter if she -- if the detective lawfully had the
16 information in the first place.

17 MR. NIETO: If I may, Your Honor. Yes. The second
18 birth date that's provided -- there's two issues. It's the
19 first issue in the previous statement and, yes, as Your Honor
20 identified, he's already invoked, she asked him very
21 specifically what the passcode is, and we would suggest that is
22 a bridge too far. The surrounding information --

23 THE COURT: And assuming I agree with that and that
24 that was illegal, the real question is, how does it possibly
25 matter if one concludes that the initial acquisition of the

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1 information was lawful.

2 MR. NIETO: And I guess, Your Honor, the
3 communicating factors of this was retired FBI agents' testimony
4 with regards to -- the forensic expert.

5 THE COURT: Shumway.

6 MR. NIETO: Yeah, Shumway, who said, you know, he's
7 into the phone based on what Detective Marke1 had done but
8 cannot access all the other passwords that are saved within the
9 phone. Cannot do that. So he then, as faulty as his
10 recollection may be, but as the video supports he then goes in
11 front of Mr. Bendann again to repeat the same process.

12 THE COURT: Let's imagine that's all illegal. If
13 Marke1 had acquired those six digits in the first interaction
14 with your client and that was lawful, aren't we still the same
15 place? It doesn't matter, it's irrelevant, they already have
16 the information.

17 If you get information, you acquire evidence lawfully and
18 then subsequently, for whatever reason, you conduct a second
19 search or a second interrogation and that's completely unlawful
20 and acquire the same information that you got the first time a
21 few minutes before lawfully, well, it doesn't really matter,
22 right?

23 MR. NIETO: And I suppose the -- I suppose the issue
24 that we would have would be that the retired FBI agent did not
25 simply enter in 070184. Still went back to make confirmation

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1 that that was, in fact, the correct passcode.

2 THE COURT: Yeah. So let's assume that they've got
3 faulty memories and at the moment they can't remember, they
4 left it in their notes upstairs, whatever, so now through an
5 unlawful means they seek to confirm or reacquire what they
6 actually already had lawfully.

7 MR. NIETO: To access a second -- within the phone,
8 all the different passwords for every other count that would be
9 accessed from that phone.

10 THE COURT: well, tell me factually, is that
11 significant in the investigation in this case or what's -- my
12 assumption, perhaps incorrect, has been that all that matters
13 in this is 070184. Once you have that, you have the keys to
14 the kingdom.

15 MR. NIETO: Yes. And again, Your Honor,
16 respectfully, it's our position that the first -- when law
17 enforcement first obtains that passcode --

18 THE COURT: That that was unlawful.

19 MR. NIETO: Yes, Your Honor.

20 THE COURT: And for all the reasons that you very
21 capably articulated, Mr. Nieto, as you always do, you do a
22 great job, that's why this is a very productive discussion that
23 you and I are having right now, aren't -- isn't 070184 the keys
24 to the kingdom? There's nothing else.

25 MR. NIETO: Yes, Your Honor.

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1 THE COURT: Okay. So doesn't that ultimately mean,
2 then, that this entire question on this motion turns on the
3 lawfulness of what happened between Markel and your client in
4 the first instance relative to --

5 MR. NIETO: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. NIETO: So for all those reasons we're asking
8 that the motion to suppress be granted.

9 THE COURT: Thank you. Let's go to the next motion.

10 MS. MCGUINN: We're going to the next motion. Does
11 Your Honor -- the Government go first?

12 THE COURT: And I understand there's no evidence,
13 there's just going to be argument.

14 MS. MCGUINN: Right, Your Honor. I would just ask to
15 introduce Government's -- I guess we have it marked as
16 Government's Exhibit 2, which is the federal warrant. I know
17 that Your Honor has a copy of that. We have a copy here as
18 well for purposes of this argument.

19 THE COURT: Right. And so the record is clear, we've
20 handled issues relating to the acquisition of the phone and the
21 most basic access to it through the password that the defendant
22 supplied. Now we're onto the question of the lawfulness of the
23 Government's, what, subsequent complete forensic examination of
24 the phone. Is that what we're really talking about here,
25 Ms. McGuinn?

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1 MS. MCGUINN: Yes, Your Honor. And I have marked as
2 Government's Exhibit 4, which is the federal warrant for
3 this -- purposes of this argument. I believe Your Honor
4 already has a copy, but --

5 THE COURT: All right.

6 MS. MCGUINN: -- since we're discussing the
7 affidavits in both warrants, obviously we need both.

8 THE COURT: And this dispute really just goes to the
9 question of whether or not the affidavit lawfully or
10 effectively under the law authorized the search that was
11 conducted. Let's hear the Government's side of this.

12 MS. MCGUINN: Thank you, Your Honor.

13 Your Honor, in the defendant's motion, which is ECF 78,
14 the defendant has argued that there is insufficient probable
15 cause as to the state search warrant, which the Government has
16 introduced already, as well as the federal warrant, which the
17 Government introduces now as Government's Exhibit 4.

18 The affidavits -- I think the argument is threefold. One,
19 that the affidavits didn't establish probable cause that there
20 was evidence of a crime that could be found on the devices
21 pursuant to the February 3rd, 2023 search warrant of the
22 residence that --

23 THE COURT: I misspoke a second ago. Let me clarify.

24 MS. MCGUINN: Yes.

25 THE COURT: The attack is on the affidavits in

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1 support of both warrants.

2 MS. MCGUINN: Yes. Yes, sir.

3 THE COURT: All right.

4 MS. MCGUINN: So the first argument is that the
5 affidavit did not support probable cause that evidence of a
6 crime would be found on the devices for the residential
7 warrant, the state warrant from February 3rd of 2023.

8 My understanding of the second allegation is that both
9 affidavits were based on stale information; and lastly, if the
10 Government were to fail on both of those grounds, the defense
11 says Leon doesn't save this either. There's not a good faith
12 basis for Detective Markel or later Agent Corn to then act on
13 these two signed warrants. The state warrant was signed by
14 District Court Judge Karen Pilarski and the federal warrant was
15 signed by now-retired Magistrate Judge Beth Gesner.

16 Your Honor, as to the first prong of the defendant's
17 argument, that affidavits did not establish enough probable
18 cause, as Your Honor knows and as we've --

19 THE COURT: So let's dispense with the term "enough
20 probable cause."

21 MS. MCGUINN: Yes, sir.

22 THE COURT: That's not a concept that is actually --

23 MS. MCGUINN: Sufficient probable cause.

24 THE COURT: No, no qualifiers at all. There's either
25 probable cause or there's not.

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1 MS. MCGUINN: Yes, sir.

2 THE COURT: No adjectives, "enough," "sufficient,"
3 "adequate." It's just probable cause. There's either probable
4 cause or there's not probable cause. Go ahead.

5 MS. MCGUINN: Yes, sir. So as the Government has
6 articulated in its response, this Court should give great
7 deference to the issuing judge's findings of probable cause.
8 The evaluation should be done in a commonsense manner and the
9 legal basis under one of the seminal cases, Illinois v. Gates,
10 is that so long as the magistrate judge had substantial basis
11 for concluding that a search warrant would uncover evidence of
12 wrongdoing, the Fourth Amendment requires no more than this.

13 The search to uncover evidence of wrongdoing in this case,
14 first starting with the search warrant of the residence which
15 was issued by the State District Court Judge. The residential
16 warrant, as I'll call it, indicated that there was enough
17 probable cause to search the residence, ultimately seize the
18 iPhone, which was described by Minor Victim.

19 As you've seen in the affidavit, Minor Victim specifically
20 described it as a black phone in a white case. Minor Victim
21 also in the affidavit described the sexual assaults that
22 occurred against him and that the defendant had documented
23 these on the iPhone.

24 All of the other information contained in the affidavit
25 combined with that information shows that there's probable

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1 cause, that there was fair probability that there was
2 contraband that would be found in a particular place.

3 This affidavit is partially based on what would be
4 considered some hearsay evidence by -- on the part of Minor
5 Victim or the including the other minor victim who is not the
6 subject of the indictment. Minor Victim talked about how he
7 communicated with the defendant via cell phone, through
8 Snapchat, and he described that the defendant literally had
9 access to, at one point, hundreds of videos and thousands of
10 images of he, Minor Victim.

11 Minor Victim actually gave up his own cell phone, which is
12 also contained in the affidavit, including some of the
13 conversations that Your Honor can see in the affidavit where,
14 on December 8th of 2022, less than two months before the search
15 warrant, the defendant is referring to him as "Puppy" and it's
16 clear in the exchange that there is a dominance and control and
17 the defendant is asking for images to be sent to him.

18 THE COURT: What does the affidavit reveal about what
19 Minor Victim Number 1 said about the time frame during which
20 information was accumulated?

21 MS. MCGUINN: Yes, Your Honor. So that sort of goes
22 to the second prong, which is the staleness prong. The minor
23 victim describes how the defendant and he met while he was in
24 the middle school at Gilman. He describes that at some point
25 when he was approximately 15 years old -- he was born in March

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1 of 2021 [sic] -- so roughly 2016, 2017.

2 THE COURT: And what's the date of the affidavit?

3 MS. MCGUINN: The date of the affidavit?

4 THE COURT: Yeah.

5 MS. MCGUINN: Itself is February 1st.

6 THE COURT: of?

7 MS. MCGUINN: 2023.

8 THE COURT: So we're talking about a period up to
9 eight years prior.

10 MS. MCGUINN: Starting, yes, going back that far.

11 Minor Victim, as he's identified in the warrant as Minor
12 Victim 2, he discusses that -- that's what the Government would
13 consider grooming activity began, that it continued through his
14 ending of high school, which was at least September of 2021
15 when he went off to college.

16 The minor victim describes and it's contained in the
17 warrant that even though he attained legal adulthood, the
18 defendant continued to contact him while he was in college and
19 would continue to ask him or demand of him or threaten him to
20 send images to him.

21 More importantly, on particularly as it relates to the
22 residential warrant, on Page 8 of the affidavit, Minor Victim
23 last saw Mr. Bendann, the defendant, in the summer of 2022. He
24 learned that the defendant had been placed on administrative
25 leave and the defendant contacted him -- and this is

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1 particularly important -- that the defendant contacted him and
2 said -- well, first asked if he was, he, Minor Victim, was the
3 one who reported him to the school and then said, "I'm deleting
4 everything," which implies even though it was eight years since
5 the first instances of abuse, here we are eight years later and
6 he's deleting everything, which infers that he still had
7 evidence of this abuse.

8 Moreover, Minor Victim described that the defendant saved
9 these images, had a special folder on his phone where he kept
10 these images of Minor Victim, and both Detective Markel and
11 later Detective Corn -- or, excuse me, Agent Corn, both
12 articulate in their affidavits through their training,
13 knowledge, and experience that collectors of child pornography,
14 producers of child pornography, they're different. These are
15 different cases than your run-of-the-mill drug case, your
16 run-of-the-mill gun case.

17 They're different because collectors, distributors,
18 producers of child pornography go through a lot of effort,
19 quite frankly, to accumulate that collection. In the instance
20 of this case, there is a several-year grooming process before
21 the defendant ultimately gets what he wants, which are full
22 naked images of him sexually abusing a child.

23 These are not -- these are prized things. And so we have
24 under this staleness argument the Government has articulated
25 several cases through not only the Fourth Circuit but other

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1 circuits where courts have routinely agreed that child sexual
2 abuse material cases are just different, that sometimes a
3 four-month lapse in time for the Richardson case is okay, and
4 we even have a case in Carroll, which is out of the Seventh
5 Circuit, that a five-year period is permissible.

6 Here, we have evidence that the abuse began possibly eight
7 years prior but continued for several years through the end of
8 middle school and into high school.

9 While the Fourth Amendment requires that the Government
10 have particularity, and that includes as to time, it is clear
11 here from both what Detective Markel and later Agent Corn in
12 the federal warrant that not only is there evidence through
13 what the Minor Victim explained, but there's also evidence
14 through their training, knowledge, and experience and through
15 what the Court's have held routinely that because of the nature
16 of these cases the static and the mobile of child pornography
17 and abuse cases, it does take time to entice, to coerce, to
18 build that trust, the continuing nature takes time to amass
19 those collections and save them, and Agent Corn further argues
20 that there's even an ability to recover deleted videos, which
21 is especially important here where the defendant actually told
22 Minor Victim that's exactly what he was doing, that he was
23 deleting videos.

24 So the fact that Detective Markel and Agent Corn
25 articulate through their affidavits this particularity as to

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1 why child sex abuse cases are different. In this case, again,
2 there are chats from December of 2022, the Minor Victim
3 actually articulates that the last sexual contact was probably
4 as late as September of 2021, which is only 16 months prior to
5 the execution of this particular warrant.

6 Your Honor, lastly, if the Government is not successful on
7 those first two arguments, there is the good faith exception.
8 Per the defendant's motion, they seem to be focused mostly on
9 the fact that -- quoting their motion -- that both Judge
10 Pilarski and Magistrate Judge Gesner were acting as a rubber
11 stamp in this particular case.

12 In this situation, it's clear when you look at the
13 affidavits that both judges had ample information before them
14 to review and decide probable cause existed. There are only
15 four situations where reliance on a search warrant would be
16 unreasonable, as we know from Leon, one, that the magistrate
17 for some reason was misled by the information in the affidavit
18 that the officer or in this case the officer and the agent knew
19 was false or in reckless disregard of the truth, that a
20 Magistrate wholly abandoned the detached and neutral judicial
21 role, which is, I believe, what the defense has articulated by
22 saying these two judges were acting as rubber stamps, that the
23 warrants themselves were so lacking in probable cause that it
24 rendered any belief or relying on them as unreasonable by the
25 officers, or that they were so facially deficient by failing to

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1 particularize places or things to be searched and seized that
2 they can't be valid.

3 It's clear here that the two judges were not acting as
4 rubber stamps. The affidavits essentially had probable cause
5 for the home of the defendant, ultimately his electronic
6 devices, and then moving on to the federal warrant, not only to
7 do the devices themselves but the accounts that were also asked
8 to be searched.

9 The rubber stamp argument, Your Honor, is basically a
10 reprisal of the first argument, which is that the affidavits
11 themselves were deficient. In this case, the Government argues
12 based on Government's Exhibit 4, and I believe it was marked as
13 Government's Exhibit 1, which was the state warrant, that the
14 affidavits are in the record, that they speak for themselves
15 and certainly they contain probable cause such that Judge
16 Pilarski and Judge Gesner signed those warrants and the agents
17 and the officers relied on them appropriately.

18 Unless there are any other questions, Your Honor, I'll
19 submit.

20 THE COURT: Thank you. Mr. Nieto?

21 MR. NIETO: Yes. Thank you, Your Honor.

22 And again, Your Honor, I know the Court has reviewed the
23 warrants, but just for purposes of keeping the record as clean
24 as I can.

25 Your Honor, the Baltimore County Police were contacted in

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1 January of 2023 regarding an allegation that Mr. Bendann was
2 providing alcohol to students. Not in January of 2023 but
3 rather in July and August of 2021, which was almost two years
4 prior, there were no allegations or suggestions or photo or
5 video recording of those incidents.

6 As the investigation develops, a complaining witness tells
7 police about the abuse or this relationship that he allegedly
8 has with Mr. Bendann from 2016 to 2019. And I say that, Your
9 Honor, because the complaining witness, as the Government
10 acknowledged based on his date of birth, turned 18 in 2019. So
11 the conduct at issue in this warrant would have allegedly
12 occurred almost four to seven or eight years prior to obtaining
13 this search warrant.

14 On February 1st, 2023, the State Police or state law
15 enforcement get the search warrant for Mr. Bendann's house car
16 and person. About a week later on the 9th, the federal agents
17 get another search warrant for the same items, as well as
18 Google, Snapchat, Instagram, and Apple accounts.

19 The affidavits in support of those warrants generally
20 parallel themselves. There might be the inclusion or deletion
21 of a few minor points, but I would submit to the Court that the
22 information in those two affidavits largely reflect each other.

23 Our position on this matter is twofold, respectfully.
24 Number one, there is no probable cause that evidence of a crime
25 as detailed in that warrant would be found on these identified

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1 devices or accounts in 2023.

2 Our second issue is, if the Court concludes that probable
3 cause exists for these alleges offenses identified in the
4 warrant, we would respectfully submit that that probable cause
5 is stale simply based on the antiquity of the allegations
6 because, again, nothing currently ongoing to suggest child
7 pornography or sexual exploitation of minors, which is the
8 focus of the search warrant.

9 The Government, I understand it, they argue that these
10 warrants contain sufficient details to establish that evidence
11 would be found on these devices but, again, Your Honor,
12 respectfully, we don't agree. We believe that --

13 THE COURT: So indulge me in a hypothetical.

14 A bank is robbed in 2016. The loot is never recovered.
15 Four years pass. A person purportedly with knowledge comes
16 forward and says, I know where the loot is, it was stashed four
17 years ago in a particular attic. There'd be no dispute that,
18 provided the person was otherwise credible, that there's
19 probable cause to believe that evidence of crime is concealed
20 in that attic, even though by the informant's own statement, he
21 or she only knows this based on something that they perceived
22 four years ago.

23 MR. NIETO: And I --

24 THE COURT: The mere passage of the four years would
25 say, you can't have a warrant for that attic. I mean, a lot of

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1 things could have happened in four years. Somebody could have
2 gone up there and found it, they could have taken it, and so
3 forth.

4 MR. NIETO: And I suppose, Your Honor, based on that
5 hypothetical I would be inquiring for additional information to
6 establish that probable cause. Because, again, if we're
7 talking about probable cause or staleness they kind of bleed
8 together in my arguments.

9 THE COURT: Yeah. Staleness can definitely erode
10 probable cause.

11 MR. NIETO: And again, Your Honor, staleness in
12 investigations involving child pornography are unique vis-à-vis
13 certain other investigations. But with respect to your
14 hypothetical, respectfully, Your Honor, I do not believe that
15 there is probable cause for a search warrant when someone,
16 without anything else, simply says I understand after this bank
17 robbery, I know the money is stashed at 123 Fake Street, please
18 go and search it, I think there needs to be more because in the
19 passage of time that is precisely is there probable cause in
20 the day and age in which that warrant is executed.

21 THE COURT: Okay. Fair enough. And so maybe we
22 would have a debate about that in the context of the bank
23 robbery case. And I'm not going to add any more facts to the
24 hypothetical, but that's sort of a baseline.

25 But in this case there are additional facts, there is the

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1 information from the experienced agents that set out in the
2 affidavit about how people who engage in this category of
3 offense often behave and the affidavit tells us that they
4 sometimes, in fact, frequently they accumulate their trove of
5 unlawful material and they curate it and it has value to them
6 and they protect it and they secrete it and they certainly
7 don't dispose of it. And this from people who, according to
8 the affidavit, have a lot of experience conducting
9 investigations in this kind of a case.

10 MR. NIETO: Yes, Your Honor. I did see that portion
11 of the affidavit. And I suppose my response to that would be
12 allegations of child pornography, possession or production is
13 not and should not be a blank check for law enforcement to cash
14 out whenever the mood strikes them.

15 And I'm not suggesting that's what happened here, but
16 inherent in that explicit explanation in the affidavit says we
17 have allegations that the child pornography may have been
18 possessed and since people collect it, it doesn't matter how
19 much time has gone by, it's still viable, it's still probable
20 cause. And I guess, Your Honor, and in the context of child
21 pornography cases, that's -- that is our issue.

22 THE COURT: So you may have an issue with respect to
23 an infinite amount of time, but of course the facts of this
24 case aren't an infinite amount of time. There are a certain
25 number of years.

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1 MR. NIETO: To be sure, Your Honor, yes. Yes. But,
2 again, dealing with the specifics in this particular case, if I
3 may -- if I may, Your Honor, the -- and this case is a little
4 bit confusing because, as the Government addressed as a Minor
5 victim, this complaining witness is no longer a minor, has not
6 been a minor going on five years now. And so what we see is
7 and including in that affidavit, which I can get into, Your
8 Honor, there's text message threads, there's information about
9 conversations between, allegedly, Mr. Bendann and a 21- or a
10 22-year-old.

11 THE COURT: That might have been all about -- that
12 interaction itself could be lawful and yet at the same time,
13 though, be powerful evidence of the existence of evidence of
14 things that were not lawful, i.e., similar conduct occurring
15 prior to 2019.

16 MR. NIETO: Yes, Your Honor. Absolutely. But what
17 I'm simply suggesting is that in -- and I don't think this is
18 necessarily contained in the affidavit but I do think it's
19 important to tell the Court is that unlike many child
20 pornography possession and production cases, the relationship
21 between -- the alleged relationship between Mr. Bendann and
22 this complaining witness allegedly begins when the complaining
23 witness is a teenager and continues --

24 THE COURT: And a minor.

25 MR. NIETO: Yes, Your Honor.

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1 THE COURT: More important than teenager is minor.

2 MR. NIETO: The allegations are -- starting when he
3 was 15 or 16, continuing to approximately 21 or 22. And I
4 guess that's an important distinction to be made because the
5 alleged relationship continues after the complaining witness is
6 already an adult.

7 THE COURT: Yeah, but when he's 19, 20, 21, and even
8 assuming that whatever he's participating in at that point is
9 completely consensual, it can't render what occurred prior to
10 the 18th birthday lawful.

11 MR. NIETO: Of course not, Your Honor, but it's
12 included in the affidavit in support that there's probable
13 cause that images of child pornography and exploitation of a
14 minor will be found in 2023 desp -- and again, in support of
15 that is look at the nature of their relationship now. And I --
16 again, Your Honor, I suggest that's just simply a bridge too
17 far for determining probable -- for the staleness and --

18 THE COURT: well, it's not the only thing that's in
19 the affidavit and is it improper that it's in there? I don't
20 think so. I think it casts some light on the question of
21 whether there's likely to be evidence of criminal conduct on
22 the phone, i.e., images depicting activity between the two of
23 them prior to the 18th birthday.

24 MR. NIETO: I suppose, Your Honor, the text thread
25 about which I am referencing, which was referenced in the

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1 affidavit in December of 2022, and the complaining witness was
2 almost 22 years old at that point, that's included in there.

3 And I say, Your Honor, again, the classification of the
4 complaining witness as a Minor Victim in December of 2022 can
5 be deceptive. And I'm not suggesting it was intentional, but
6 what I'm simply suggesting is it creates this image that it's a
7 continuing minor and the fact that, you know, six pages
8 earlier --

9 THE COURT: But they've been told -- but the judges
10 had been told what the minor person's age was.

11 MR. NIETO: Yes, Your Honor.

12 THE COURT: And date of birth.

13 MR. NIETO: Yes, Your Honor. As I said --

14 THE COURT: So presumably the judges can do the math
15 and understand that the evidence of continued familiarity past
16 the age of majority is being submitted to strengthen the
17 suggestion of a relationship that existed prior to majority.

18 MR. NIETO: And I guess our position, Your Honor, is
19 that, again, respectfully, we don't believe, for example, that
20 particular text conversation moves the needle one way or the
21 other with regards to probable cause.

22 So, Your Honor, if I may --

23 THE COURT: Yeah.

24 MR. NIETO: -- both in terms of the first issue is
25 the probable cause of the affidavit and, if I may, Your Honor,

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1 just purposes of the record, as I suggested, we have the police
2 being notified about this production of alcohol, some 18 months
3 prior. They include a conversation or an interview with Victim
4 Number 1 who alleged that Mr. Bendann allegedly allowed him to
5 drink, that was in September of 2021. So that's approximately
6 16 months prior to that. And again, of course, the purchasing
7 of alcohol for people, you know, underage or of age or whatever
8 it might be, that doesn't necessarily correlate with the
9 production, the possession of child pornography, nor the sexual
10 exploitation of minors with nothing else.

11 There's of course no photography or videography or
12 anything in that reference with regards to those interactions,
13 nothing to substantiate -- I think there's some allegation,
14 they throw in there the suggestion that Mr. Bendann allegedly
15 had a Ring camera at his house and based on people running
16 around in certain capacities, perhaps that might have been
17 recovered. Again, Your Honor, there's nothing to substantiate
18 that and, again, I don't believe that is a factor for the
19 probable cause determination.

20 But more importantly, then, they have about four days
21 later on January 30th of 2023, that is Victim Number 2, which
22 is the complaining witness who turned 18 in 2019, almost four
23 years before this interview. In this affidavit, they detail
24 out the relationship and, in fact, indicate the last time they
25 had seen each other was in the summer of 2022. Allegations of

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1 photographs, but there's of course no clarification in the
2 affidavit as to the timeline on that. And that's where it
3 becomes incredibly frustrating because, again, as the Court
4 knows, the child pornography possession, production, or sexual
5 exploitation of a minor would have had to have occurred prior
6 to 2019.

7 This affidavit includes in this complaining witness's
8 statement to the police conduct that occurred thereafter, and
9 there's no clarification in that affidavit to provide Judge
10 Gesner or Judge Pilarski any clarification as to whether
11 they're talking about stuff that happened when the complaining
12 witness was a minor or as their relationship continued to
13 develop, you know, into his adult age. There's nothing to
14 suggest it was before or after the complaining witness was 18.

15 And of course, you know, naturally, the affidavit fails to
16 account for the fact that the complaining witness was, in fact,
17 held back a year in either middle school or high school. So
18 when they continue to reference the year of high school, 10th
19 grade, 11th grade, I think the Court can take judicial notice
20 for the most part people turn 18 in their senior year. This
21 complaining witness was held back a year, so he was older. So
22 he turned 18 in his junior year which, again, is not made clear
23 and muddies the water as to whether these conversations, these
24 photographs or these allegations occurred pre 2019 or post
25 2019.

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1 So Your Honor, again, on the four corners of the document,
2 it is our position that there is no probable cause to support
3 the searches of these items in 2023 when the warrant is
4 executed.

5 As argument 1(b) in that, that is the staleness argument,
6 Your Honor. Again, it sort of bleeds together because if the
7 Court finds probable cause existed, we're simply suggesting
8 that probable cause is stale. The staleness argument in these
9 types of cases, as I suggest to the Court, is different because
10 I believe it depends on a preliminary finding that the suspect,
11 or in this particular case Mr. Bendann, was the person who was
12 interested in those types of things, right? There has to be
13 circumstances to suggest that he had not only access to images
14 willfully and deliberately, but had sought them out for a
15 preexisting predilection, that he was specifically interested
16 in that.

17 And that's where I think the issues can become confused
18 because since 2019, whatever pictures, videos, anything that
19 was provided, it has nothing to do with child pornography. It
20 has nothing to do or nothing to support a preexisting
21 predilection for that type of imagery. In fact, I'll be
22 candid, Your Honor, it's a little bit unclear as to exactly how
23 this relationship truly starts. You can see in the affidavit
24 an evolution of that relationship, but it seems to be things
25 go, I think as the complaining witness indicated, that things

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1 got progressively worse, it seemed to be upon the graduation
2 from high school and when he was in college. That is not and
3 has nothing to do with the child pornography statutes and,
4 again, it's -- I think separates this from some of the other
5 cases in which the Court may find.

6 So with all that being said, Your Honor, we respectfully
7 submit that there's insufficient evidence to support probable
8 cause and if the Court concluded there was probable cause we
9 would respectfully submit that that is stale based on the
10 timing of the execution of that search warrant.

11 THE COURT: Thank you, Mr. Nieto.

12 MR. NIETO: Thank you.

13 THE COURT: There are no other motions pending
14 correct, Mr. Nieto?

15 MR. NIETO: Correct, Your Honor.

16 THE COURT: I think there's a motion to -- for
17 permission to file more motions or something to that effect,
18 but we'll put that aside. Nothing else substantively.

19 MR. NIETO: Correct. And I filed that
20 prophylactically, Your Honor, in case something comes up.

21 THE COURT: Yeas. So the Court's ready to rule.
22 I'll elaborate on my rulings in a written opinion.

23 Both motions will be denied, first with respect to the
24 adequacy of the affidavits in support of the warrants and the
25 staleness issue. The suppression of the evidence in this case

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1 is not warranted because of Leon at least. We haven't crossed
2 the boundaries that Leon sets. I don't think we've got
3 difficulties or problems with these warrants regardless, but
4 even if we did, they're not on the scale of Leon.

5 with respect to the body of the affidavits themselves, I
6 find that probable cause to believe that evidence of crime
7 would be uncovered was amply demonstrated to each of these
8 judicial officers in the issuance of the warrants were correct.

9 As to staleness, the Court will elaborate slightly in its
10 written ruling but it has everything to do with the nature of
11 the alleged offense and the circumstances that prevail in these
12 kinds of cases where people who commit these sorts of offenses
13 typically do retain and store their trove of images and that
14 militates against any conclusion of staleness here.

15 with respect to the acquisition of the passcode to gain
16 access to the Smartphone, as was probably implied by the
17 questions that I put to counsel and the discussion that we had
18 previously, for the Court it all hinges on Detective Markel's
19 initial acquisition of that code. And, while the circumstances
20 are somewhat concerning, the reality in this legal space is
21 that investigating officers and agents are allowed to go up to
22 the line. They're allowed to go to the edge.

23 The problem arises when they step over the line or they
24 step off the edge, and I find that then-Detective Markel didn't
25 cross lines and didn't step off the edge. I find that the

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1 phone was placed in front of the defendant, that, yes, the
2 statements that Mr. Nieto focuses on had been made previously
3 about access to his face and his hands. All of that had
4 occurred, but Detective Markel didn't take a step beyond that
5 and specifically direct Mr. Bendann to supply the critical
6 information.

7 Bendann may have for his own reasons subjectively inferred
8 that he should supply this information at this point. I don't
9 know what his exact motivation was, but the conduct of the
10 officer I find was not objectively calculated to elicit that
11 information in circumstances when the officer was otherwise not
12 entitled to do so.

13 Everything that the officer said was true and accurate,
14 the defense concedes as much, and the defendant perhaps
15 reflexively -- I don't know the reason -- supplied the
16 information and it was voluntary. And once that had been
17 voluntarily provided by the defendant, then law enforcement was
18 entitled to use that information as they subsequently did.

19 As I indicated, I'll elaborate in a written opinion on the
20 reasons for the denial of both motions. I'll see counsel at
21 the bench.

22 We're off the record.

23 The defendant's remanded to the custody of the Marshal.
24 Court's in recess.

25 (The proceedings concluded at 12:41 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Amanda L. Longmore, Registered Professional Reporter and Federal Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 22nd day of March 2025

-S-

AMANDA L. LONGMORE, RPR, FCRR
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